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L.C., I.H., A.L., and Antonia Salas Ubaldo

**UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA**

L.C., a minor by and through her guardian *ad litem* Maria Cadena, individually and as successor-in-interest to Hector Puga; I.H., a minor by and through his guardian *ad litem* Jasmine Hernandez, individually and as successor-in-interest to Hector Puga; A.L., a minor by and through her guardian *ad litem* Lydia Lopez, individually and as successor-in-interest to Hector Puga; and ANTONIA SALAS UBALDO, individually;

Plaintiffs,

vs.

STATE OF CALIFORNIA; COUNTY OF SAN BERNARDINO; S.S.C., a nominal defendant; ISAAH KEE; MICHAEL BLACKWOOD; BERNARDO RUBALCAVA; ROBERT VACCARI; JAKE ADAMS; and DOES 6-10, inclusive,

Defendants.

Case No. 5:22-cv-00949-KK-SHK

Honorable Kenly Kiya Kato

**PLAINTIFFS' CONSOLIDATED
STATEMENT OF GENUINE
DISPUTES OF MATERIAL FACTS
AND ADDITIONAL MATERIAL
FACTS**

1 Pursuant to Local Rule 56-2, Plaintiffs respectfully submit this Consolidated
2 Statement of Genuine Disputes of Material Facts and Additional Material Facts in
3 support of their Consolidated Opposition to Defendants' Motions for Summary
4 Judgment.

5
6 DATED: February 27, 2025

LAW OFFICES OF DALE K. GALIPO

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8 Bv /s/ *Hang D. Le*

9 Dale K. Galipo

10 Hang D. Le

11 Attorneys for Plaintiffs
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STATE DEFENDANTS' ALLEGED MATERIAL FACTS AND PLAINTIFFS' RESPONSES

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
1. In February 2021, Defendant Michael Blackwood was an officer with the California Highway Patrol (CHP), assigned to patrol. <i>Evidence:</i> Blackwood Dep. 5:25-6:10, Ex. P.1	<u>Undisputed.</u>
2. In February 2021, Defendant Isaiah Kee was a Sergeant with the CHP, assigned to patrol. <i>Evidence:</i> Kee Dep. 13:17-14:5, Ex. O.	<u>Undisputed.</u>
3. In February 2021, Defendant Bernardo Rubalcava was a CHP officer, assigned to patrol. <i>Evidence:</i> Rubalcava Dep. 9:25-10:20, 66:4-8, Ex. Q.	<u>Undisputed.</u>
4. On February 16, 2021, at approximately 5:45 p.m., CHP officers, including Kee, were investigating a car-to-car shooting, which occurred on Interstate 15. The suspect, later identified as decedent Hector Puga, drove along the passenger side of the victim's vehicle, and fired one shot at the victim and struck the victim's front passenger door. Puga fled in his vehicle after shooting at the victim. The victim described Puga as a Hispanic male, heavy set, bald, and Puga's vehicle as a white Ford Expedition, with large black rims, and a funeral procession sticker on the back window. <i>Evidence:</i> Arrest-Investigation Report 1-12, Ex. L; Kee Dep. 75:18-77:24, Ex. O.	<u>Objection.</u> Compound; hearsay.

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<p>5. Blackwood and Rubalcava were briefed about the freeway shooting at the beginning of their work shifts. <i>Evidence:</i> Kee Dep. 75:18-77:24, Ex. O; Blackwood Dep. 51:3-20, Ex. P; Rubalcava Dep. 77:14-78:15, Ex. R.</p>	<p><u>Undisputed.</u></p>
<p>6. At approximately 1:30 a.m. on February 17, 2021, Blackwood and Rubalcava, who were riding in the same CHP patrol vehicle, observed a white Ford Expedition that matched the description of the vehicle involved in the earlier freeway shooting, and initiated a traffic stop. <i>Evidence:</i> Blackwood Dep. 51:3-10, Ex. P; Rubalcava Dep. 77:14-17, Ex. Q; Blackwood MVARs, Part 1 at 00:01-0:30, Ex. D.2</p>	<p><u>Undisputed.</u></p>
<p>7. Puga pulled over but did not comply with the officers' commands to turn off the car and to roll his window down. Instead, Puga drove away, and a pursuit ensued. <i>Evidence:</i> Blackwood MVARs, Part 1 at 01:35-02:00, Ex. D.</p>	<p><u>Objection.</u> Compound. <u>Undisputed.</u></p>
<p>8. Kee and San Bernardino County Sheriff's Deputies Adams and Vaccari joined the pursuit that lasted over an hour, at high speeds through residential and commercial areas. <i>Evidence:</i> Kee MVARs, Part 1 at 02:50-38:50, Ex. B; Blackwood MVARs, Part 1 at 01:50-44:52, Ex. D; Blackwood MVARs, Part 2 at 00:01-28:17, Ex. E.</p>	<p><u>Disputed</u> to the extent that this suggests the pursuit was conducted at high, dangerous speeds and posed a serious threat to the public.</p> <p>There was little to no traffic on the road and no passing pedestrians during the pursuit.</p> <p>See Ex. D to Esquivel Decl., Blackwood MVARs, Part 1; Ex. E to Esquivel Decl., Blackwood MVARs, Part 2.</p> <p>The white Expedition never targeted any of the officers nor forced other vehicles off the road during the pursuit.</p>

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	<p><i>See</i> Ex. D to Esquivel Decl., Blackwood MVARs, Part 1; Ex. E to Esquivel Decl., Blackwood MVARs, Part 2.</p> <p>The white Expedition's speed during the pursuit was fast but not outrageous as even on the freeway, the Expedition was only going 80 miles per hour.</p> <p>Ex. 6 to Le Decl., Vaccari Int. 13:22-24; Ex. 4 to Le Decl., Adams Dep. 12:3-13.</p> <p>As the pursuit continued down the dirt road, the Expedition's driving was not erratic.</p> <p>Ex. 6 to Le Decl., Vaccari Int. 16:6-8.</p>
<p>9. Puga's vehicle became disabled and stopped near the intersection of Peach and Catalpa Streets in Hesperia. It faced north on Peach Street.</p> <p><i>Evidence:</i> Blackwood MVARs, Part 3 at 08:30-10:00, Ex. F; Scene Photo, Ex. A.</p>	<p><u>Undisputed.</u></p>
<p>10. Blackwood and Kee stopped their patrol vehicles behind Puga's Expedition, with Kee's vehicle on the right of the Expedition and Blackwood's on the left.</p> <p><i>Evidence:</i> Scene Photo, Ex. A; Blackwood MVARs, Part 3 at 09:00, Ex. F; Kee MVARs, Part 1 at 38:35-38:58, Ex. B.</p>	<p><u>Undisputed.</u></p>
<p>11. Kee exited his patrol vehicle and took a position on the driver's side of Blackwood's vehicle.</p> <p><i>Evidence:</i> Kee MVARs, Part 1 at 39:00-39:15, Ex. B</p>	<p><u>Undisputed.</u></p>

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<p>12. Kee was armed with his AR-15 rifle. <i>Evidence:</i> Kee Dep. 8:2-3, 53:22-23, Ex. O; Haag Report at 2, Ex. N.</p>	<p><u>Undisputed.</u></p>
<p>13. Rubalcava joined Kee on the driver's side of the patrol vehicle, and Blackwood moved to a position on the passenger side of his patrol vehicle, standing behind the open passenger door. <i>Evidence:</i> Blackwood Dep. 42:10-19, Ex. P.</p>	<p><u>Undisputed.</u></p>
<p>14. Rubalcava had his Smith & Wesson M&P pistol that fired .40 caliber ammunition, and Blackwood was armed with a AR-15 rifle. <i>Evidence:</i> Blackwood Dep. 10:11-24, Ex. P; Rubalcava Dep. 12:19-22, 89:4-7 Ex. Q; Haag Report at 2, Ex. N.</p>	<p><u>Undisputed.</u></p>
<p>15. Over the course of the next approximately 40 minutes, Kee, Rubalcava, and other officers repeatedly ordered Puga to exit the vehicle and to show them his hands, but Puga did not comply with their orders. <i>Evidence:</i> Kee MVARs, Part 1 at 38:50-1:04:20, Ex. A; Kee MVARs, Part 2 at 00:01-40:20, Ex. C; Blackwood MVARs, Part 3 at 09:30-37:30, Ex F; Blackwood MVARs, Part 4 at 00:01-35:40, Ex G;</p>	<p><u>Undisputed.</u></p>
<p>16. Kee also repeatedly attempted to de-escalate the situation and negotiate, converse, and build a rapport with Puga in an attempt to have Puga exit the vehicle and surrender, but without success.</p>	<p><u>Undisputed.</u></p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p><i>Evidence:</i> Kee MVARs, Part 1 at 38:50-1:04:20, Ex. A; Kee MVARs, Part 2 at 00:01-40:20, Ex. C; Blackwood MVARs, Part 3 at 09:30-37:30, Ex F; Blackwood MVARs, Part 4 at 00:01-35:40, Ex G; Mangerino Dep. 42:5-16, Ex. S.</p>	
<p>17. During the course of the standoff, a female passenger exited the vehicle, and informed the officers of Puga's identity.</p> <p><i>Evidence:</i> Kee MVARs, Part 1 at 44:40-45:15, Ex. B; Adams Dep. 13:7-25, Ex. R.</p>	<p><u>Undisputed.</u></p>
<p>18. Kee attempted to break the driver side windows with five rounds of bean bags, but was unsuccessful.</p> <p><i>Evidence:</i> Blackwood MVARs, Part 3 at 14:45-15:03, Ex. F; Kee Dep. 21:1-11, Ex. O.</p>	<p><u>Undisputed.</u></p>
<p>19. The Sheriff's Sergeant broke the back window of the Expedition, and, for approximately 30 minutes, shot several volleys of pepper balls into the cabin of the Expedition in an attempt to have Puga exit the vehicle. These efforts were unsuccessful, and the pepper balls appeared to have no effect on Puga.</p> <p><i>Evidence:</i> Kee MVARs, Part 2 at 01:27-28:50, Ex. C; Adams Dep. 14:14-18:18, Ex. R.</p>	<p><u>Objection.</u> Compound.</p> <p><u>Disputed.</u></p> <p>Puga reacted to the pepper balls by coughing and complaining that his eyes were burning and that he could not see.</p> <p>Ex. 4 to Le Decl., Adams Dep. 18:10-13; Ex. 8 to Le Decl., Gonzalez Dep. 93:10-15.</p> <p>Vaccari deployed pepper balls and struck Puga in the right eye, which is extremely painful.</p> <p>Ex. 1 to Le Decl., Kee Dep. 23:2-10; Ex. 3 to Le Decl., Blackwood Dep. 14:24-15:6; Ex. 5 to Le Decl., Vaccari Dep. 32:14-18; Ex. 6 to Le Decl., Vaccari Int. 28:25-29:4; Ex. 7 to Le Decl., Mangerino Dep. 25:23-26:1.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Puga sustained a cut to the area of his forehead right above his right eye, which Blackwood associated with being hit in the right eye by pepper balls.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 13:24-14:10.</p>
<p>20. At approximately 3:40 a.m., Puga finally exited the Expedition with his hands above his head. Although he was shirtless, he faced north away from the officers and not displaying his waistband to the officers. <i>Evidence:</i> Blackwood MVARs, Part 4 at 33:40-37:49, Ex. G; Edward Mangerino Video at 00:01-00:42, Ex. H.</p>	<p><u>Objection.</u> Compound.</p> <p><u>Disputed</u> that the officers could not see Puga's waistband.</p> <p>Puga was shirtless and the officers could at least see the back of Puga's waistband, if not the sides of his waistband at times, given that the officers were offset and behind Puga.</p> <p>See Ex. 11 to Le Decl., Blackwood Dashcam Video at 35:35-37:50; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 00:00-01:54.</p>
<p>21. Puga stood near the driver side door, raising and dropping his hands, for several minutes, then quickly walked to the front of the Expedition and pressed his torso against the hood of the car concealing the front of his waistband from the officers' view. <i>Evidence:</i> Blackwood MVARs, Part 4 at 37:50-42:50, Ex. G; Kee Dep. 80:18-81:11, Ex. O; Rubalcava Dep. 53:12-17, 80:11-19, Ex. Q; Blackwood Dep. 33:25-34:6, Ex. P.</p>	<p><u>Objection.</u> Compound.</p> <p><u>Disputed</u> that Puga walked at a quick pace to the front of the Expedition and that he intentionally concealed the front of his waistband from the officers.</p> <p>Puga walked at an even pace to the front of the car.</p> <p>Ex. 11 to Le Decl., Rubalcava Dashcam Video at 37:48-37:50.</p> <p>The front of the vehicle was blocking the officers' view of Puga's waistband.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 80:15-19; Ex. 4 to Le Decl., Adams Dep. 41:2-9; Ex. 5 to Le Decl., 63:23-64:3.</p>
<p>22. When Puga moved to the front of the Expedition, Kee and Rubalcava moved to the southwest corner of the</p>	<p><u>Disputed.</u> Kee and Rubalcava never got to the area near the utility pole. Kee and Rubalcava were further back at the time the shooting started.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>intersection, near the utility pole, such that they were almost in line with the front of the Expedition.</p> <p><i>Evidence:</i> Erin Mangerino Video at 00:01-00:42, Ex. I; Kee Dep. 81:6-82:3, Ex. O; Rubalcava Dep. 79:14-80:10, 95:15-96:11, Ex. Q.</p>	<p>There was an electrical pole on the southwest corner of the intersection that was almost parallel to the front of the Expedition.</p> <p>Ex. 1 to Le Decl., Kee Dep. 26:22-27:9; Ex. 15 to Le Decl., Photograph of Scene.</p> <p>In the Erin Mangerino cellphone video of the incident, moments before the shooting, two figures can be seen standing without cover in the street, partially obscured by the utility pole before backing away in a southern direction, away from the utility pole, and out of frame.</p> <p>Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 0:00:29-00:53.</p> <p>Erin Mangerino was unable to see any officers standing on her side of Peach Street.</p> <p>Ex. 7 to Le Decl., Mangerino Dep. 53:11-22.</p> <p>Rubalcava was side by side and to the right of Kee while they were approaching and when Kee started firing.</p> <p>Ex. 1 to Le Decl., Kee Dep. 29:10-19, 30:16-22.</p> <p>Rubalcava was firing in a northeast direction during his first volley.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 21:16-19.</p>
<p>23. Kee repeatedly asked Puga if he had a gun because Kee was unable to see the front of Puga's pants and waistband; Puga denied having a weapon.</p>	<p><u>Objection.</u> Compound. Vague as to time.</p> <p>Kee claims that as he approached the electrical pole, he could only see a</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p><i>Evidence:</i> Blackwood MVARs, Part 4 at 40:30-42:20, Ex. G.</p>	<p>portion of Puga's body in front of the vehicle.</p> <p>Ex. 1 to Le Decl., Kee Dep. 29:20-23.</p> <p>Kee claims he could not see Puga's waistband while Puga was standing in front of the vehicle and could only see Puga's waistband once he moved past the front of Puga's vehicle.</p> <p>Ex. 1 to Le Decl., Kee Dep. 81:6-19.</p> <p>There was an electrical pole on the southwest corner of the intersection that was parallel to the back passenger doors of the Expedition.</p> <p>See Ex. 15 to Le Decl., Photograph of Scene; Ex. 16 to Le Decl., Photograph of Expedition at Curb.</p> <p>In the Erin Mangerino cellphone video of the incident, moments before the shooting, two figures can be seen standing without cover in the street, partially obscured by the utility pole before backing away in a southern direction, away from the utility pole, and out of frame.</p> <p>Ex. 10 to Le Decl., E. Mangerino Cellphone Video at 0:00:29-00:53.</p> <p>Erin Mangerino was unable to see any officers standing on her side of Peach Street.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>24. When Kee was approximately 20 to 30 feet from Puga, a few seconds after reaching the utility pole on the southwest corner of the intersection, Kee saw a handgun in Puga's waistband. <i>Evidence:</i> Kee Dep. 9:10-19, 28:23-29:5, Ex. O.</p>	<p>Ex. 7 to Le Decl., Mangerino Dep. 53:11-22.</p> <p><u>Disputed</u> that Kee ever reached the utility pole prior to the shooting and that Kee saw a handgun in Puga's waistband.</p>
<p>25. As Kee continued to negotiate with Puga, telling him to keep his hands up as Kee and Rubalcava approached to handcuff him, Kee saw Puga's right hand going towards the gun, and several times yelled at Puga to not reach for the gun. <i>Evidence:</i> Blackwood MVARs, Part 4 at 42:05-42:29, Ex. G.</p>	<p><u>Disputed.</u> Kee and Rubalcava never got to the area near the utility pole. Kee and Rubalcava were further back at the time the shooting started and therefore could not have seen Puga's waistband and the alleged gun in his waistband. Moreover, Puga had reached down several times throughout the time he was outside of the car to pull up his pants. Lastly, there was no gun visibly sticking out of Puga's waistband.</p> <p>There was an electrical pole on the southwest corner of the intersection that was almost parallel to the front of the Expedition.</p> <p>Ex. 1 to Le Decl., Kee Dep. 26:22-27:9; Ex. 15 to Le Decl., Photograph of Scene.</p> <p>In the Erin Mangerino cellphone video of the incident, moments before the shooting, two figures can be seen standing without cover in the street, partially obscured by the utility pole before backing away in a southern direction, away from the utility pole, and out of frame.</p> <p>Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 0:00:29-00:53.</p> <p>Erin Mangerino was unable to see any officers standing on her side of Peach Street.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 7 to Le Decl., Mangerino Dep. 53:11-22.</p> <p>Rubalcava was side by side and to the right of Kee while they were approaching and when Kee started firing.</p> <p>Ex. 1 to Le Decl., Kee Dep. 29:10-19, 30:16-22.</p> <p>Rubalcava was firing in a northeast direction during his first volley.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 21:16-19.</p> <p>Kee claims that as he approached the electrical pole, he could only see a portion of Puga's body in front of the vehicle.</p> <p>Ex. 1 to Le Decl., Kee Dep. 29:20-23.</p> <p>While Puga was positioned next to the driver's side of the vehicle, Puga was continually reaching down to pull up his pants because they were loose and kept falling.</p> <p>Ex. 1 to Le Decl., Kee Dep. 11:15-23; Ex. 4 to Le Decl., Adams Dep. 42:12-17, 43:5-13, 43:23-44:5; Ex. 8 to Le Decl., Gonzalez Dep. 105:11-25.</p> <p>Puga occasionally would drop his hands to pull up his pants while he was standing near the front of the vehicle.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 4 to Le Decl., Adams Dep. 61:3-62:3; Ex. 8 to Le Decl., Gonzalez Dep. 42:18-25.</p> <p>The bystander cell phone video taken by Erin Mangerino shows Puga with his hands up and briefly dropping his right hand to his waistband to adjust his pants before raising his hand up again, twice, before the shooting.</p> <p>Ex. 10 to Le Decl., E. Mangerino Cellphone Video at 0:00:03-00:07; 0:00:20-00:27.</p> <p>Puga did not appear to have a gun or weapon in his hand, waistband, or pocket when he exited the vehicle.</p> <p>Ex. 1 to Le Decl., Kee Dep. 24:15-17; Ex. 2 to Le Decl., Rubalcava Dep. 37:25-38:4; Ex. 3 to Le Decl., Blackwood Dep. 34:4-6; Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25; Ex. 9 to Le Decl., Edward Mangerino Video; Clark Decl. ¶ 16.</p> <p>Puga did not have anything in his hands and he never reached for any weapon while he was standing near the driver's side of the vehicle</p> <p>Ex. 1 to Le Decl., Kee Dep. 24:7-9; Ex. 2 to Le Decl., 38:8-20 Ex. 3 to Le Decl., Blackwood Dep. 15:25-16:2.</p> <p>Puga did not appear to have a weapon in his hands or on his person while he</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>stood next to the driver's side of the vehicle.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 33:25-34:3; Ex. 4 to Le Decl., Adams Dep. 21:22-22:2.</p> <p>When Puga was in front of the Expedition, Puga did not have anything in his.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 40:6-8.</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p> <p>As soon as Puga started to turn to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep.. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.
<p>26. Kee fired first when he saw Puga's hand go towards the gun. <i>Evidence:</i> Kee Dep. 9:16-10:11, Ex. O.</p>	<p>Disputed that Kee saw Puga's hand go towards a gun and that Kee fired because he saw Puga's hand go towards a gun.</p> <p>There was an electrical pole on the southwest corner of the intersection that was almost parallel to the front of the Expedition.</p> <p>Ex. 1 to Le Decl., Kee Dep. 26:22-27:9; Ex. 15 to Le Decl., Photograph of Scene.</p> <p>In the Erin Mangerino cellphone video of the incident, moments before the shooting, two figures can be seen standing without cover in the street, partially obscured by the utility pole before backing away in a southern direction, away from the utility pole, and out of frame.</p> <p>Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 0:00:29-00:53.</p> <p>Erin Mangerino was unable to see any officers standing on her side of Peach Street.</p> <p>Ex. 7 to Le Decl., Mangerino Dep. 53:11-22.</p> <p>Rubalcava was side by side and to the right of Kee while they were approaching and when Kee started firing.</p> <p>Ex. 1 to Le Decl., Kee Dep. 29:10-19, 30:16-22.</p> <p>Rubalcava was firing in a northeast direction during his first volley.</p>

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	<p>Ex. 2 to Le Decl., Rubalcava Dep. 21:16-19.</p> <p>Kee claims that as he approached the electrical pole, he could only see a portion of Puga's body in front of the vehicle.</p> <p>Ex. 1 to Le Decl., Kee Dep. 29:20-23.</p> <p>While Puga was positioned next to the driver's side of the vehicle, Puga was continually reaching down to pull up his pants because they were loose and kept falling.</p> <p>Ex. 1 to Le Decl., Kee Dep. 11:15-23; Ex. 4 to Le Decl., Adams Dep. 42:12-17, 43:5-13, 43:23-44:5; Ex. 8 to Le Decl., Gonzalez Dep. 105:11-25.</p> <p>Puga occasionally would drop his hands to pull up his pants while he was standing near the front of the vehicle.</p> <p>Ex. 4 to Le Decl., Adams Dep. 61:3-62:3; Ex. 8 to Le Decl., Gonzalez Dep. 42:18-25.</p> <p>The bystander cell phone video taken by Erin Mangerino shows Puga with his hands up and briefly dropping his right hand to his waistband to adjust his pants before raising his hand up again, twice, before the shooting.</p>

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	<p>Ex. 10 to Le Decl., E. Mangerino Cellphone Video at 0:00:03-00:07; 0:00:20-00:27.</p> <p>Puga did not appear to have a gun or weapon in his hand, waistband, or pocket when he exited the vehicle.</p> <p>Ex. 1 to Le Decl., Kee Dep. 24:15-17; Ex. 2 to Le Decl., Rubalcava Dep. 37:25-38:4; Ex. 3 to Le Decl., Blackwood Dep. 34:4-6; Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25; Ex. 9 to Le Decl., Edward Mangerino Video; Clark Decl. ¶ 16.</p> <p>Puga did not have anything in his hands and he never reached for any weapon while he was standing near the driver's side of the vehicle</p> <p>Ex. 1 to Le Decl., Kee Dep. 24:7-9; Ex. 2 to Le Decl., 38:8-20 Ex. 3 to Le Decl., Blackwood Dep. 15:25-16:2.</p> <p>Puga did not appear to have a weapon in his hands or on his person while he stood next to the driver's side of the vehicle.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 33:25-34:3; Ex. 4 to Le Decl., Adams Dep. 21:22-22:2.</p> <p>When Puga was in front of the Expedition, Puga did not have anything in his.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 2 to Le Decl., Rubalcava Dep. 40:6-8.</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p> <p>As soon as Puga started to turn to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.</p>
<p>27. Puga pulled the gun from his waistband and fired it twice in Kee and Rubalcava's direction. Kee saw two muzzle flashes from Puga's gun while Kee was firing his first volley. <i>Evidence:</i> Kee Dep. 78:15-79:6, Ex. O; Gonzalez Video at 05:30-6:47, Ex. J; Erin Marino Video at 00:51-52, Ex. I;</p>	<p><u>Objection.</u> Compound.</p> <p><u>Disputed</u> that Puga pulled a gun from his waistband. Further <u>disputed</u> that Puga fired any weapon at anyone. Further <u>disputed</u> that there any muzzle flash ever came from Puga's area.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>Annabelle Botten Interview at 02:00-02:50, Ex. L; Mangerino Dep. 35:2-36:17, 50:14-52:5, Ex. S; Goodson Dep. 26:10-27:3, 31:19-32:11, 49:11-22, 53:6-54:6, Ex. T; Adams Dep. 35:12-36:18, Ex. R; Blackwood Dep. 53:14-16, Ex. P.</p>	<p>As soon as Puga turned to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never had a gun in his hand.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never pointed his hand or a weapon in any specific direction or at any officer.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 64:8-17; Ex. 8 to Le Decl., Gonzalez Dep. 97:1-6.</p> <p>Puga never fired a weapon at any officer.</p> <p>Ex. 7 to Le Decl., Mangerino Dep. 37:14-16; Ex. 8 to Le Decl., Gonzalez Dep. 132:22-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Neither smoke nor any muzzle flash ever came from Puga.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 20:10-12; Ex. 4 to Le Decl., Adams Dep. 36:12-18; Ex. 5 to Le Decl., Vaccari Dep. 48:14-20; Ex. 8 to Le Decl., Gonzalez Dep. 99:8-25.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>None of the videos capturing the incident show Puga with a gun in his hand.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:16-18; Ex. 5 to Le Decl., Vaccari Dep. 9:15-18.</p> <p>None of the videos capturing the incident show Puga ever pointing a gun at anyone.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:22-24; Ex. 5 to Le Decl., Vaccari Dep. 9:19-21.</p> <p>None of the videos capturing the incident show Puga ever firing a gun.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:19-21.</p> <p>None of the videos capturing the incident show any muzzle flash coming from the area Puga was at.</p> <p>Ex. 1 to Le Decl., Kee Dep. 92:14-16; Ex. 2 to Le Decl., Rubalcava Dep. 93:17-19</p> <p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p> <p>There were no bullet impacts or casings found near the area of the initial shooting that would support the allegation that Mr. Puga fired a weapon at anyone.</p> <p>Clark Decl. ¶ 16a</p>
28. Kee fired two volleys of gunfire at Puga. The first volley occurred when	<p><u>Objection.</u> Compound.</p> <p><u>Disputed</u> that Kee only fired two volleys of shots. Further <u>disputed</u> that</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>Puga reached for the gun in his waistband. <i>Evidence:</i> Kee Dep. 9:7-10:16, Ex. O.</p>	<p>Puga ever reached for a gun in his waistband or that a gun was visibly sticking out of his waistband. Further disputed that Kee fired after Puga reached for a gun in his waistband.</p> <p>Puga did not appear to have a gun or weapon in his hand, waistband, or pocket when he exited the vehicle.</p> <p>Ex. 1 to Le Decl., Kee Dep. 24:15-17; Ex. 2 to Le Decl., Rubalcava Dep. 37:25-38:4; Ex. 3 to Le Decl., Blackwood Dep. 34:4-6; Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25; Ex. 9 to Le Decl., Edward Mangerino Video; Clark Decl. ¶ 15.</p> <p>Puga stood near the driver's side of the car for a period of time and during that time, the officers were able to see Puga's hands.</p> <p>Ex. 1 to Le Decl., Kee Dep. 23:23-24:3.</p> <p>Puga did not have anything in his hands and he never reached for any weapon while he was standing near the driver's side of the vehicle.</p> <p>Ex. 1 to Le Decl., Kee Dep. 24:7-9; Ex. 2 to Le Decl., 38:8-20 Ex. 3 to Le Decl., Blackwood Dep. 15:25-16:2.</p> <p>Puga did not appear to have a weapon in his hands or on his person while he stood next to the driver's side of the vehicle.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 33:25-34:3; Ex. 4 to Le Decl., Adams Dep. 21:22-22:2.</p> <p>While Puga was outside of the vehicle, Puga was continually reaching down to pull up his pants because they were loose and kept falling.</p> <p>Ex. 1 to Le Decl., Kee Dep. 11:15-23; Ex. 4 to Le Decl., Adams Dep. 42:12-</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>17, 43:5-13, 43:23-44:5; Ex. 8 to Le Decl., Gonzalez Dep. 105:11-25.</p> <p>Puga occasionally would drop his hands to pull up his pants while he was standing near the front of the vehicle.</p> <p>Ex. 4 to Le Decl., Adams Dep. 61:3-62:3; Ex. 8 to Le Decl., Gonzalez Dep. 42:18-25.</p> <p>The bystander cell phone video taken by Erin Mangerino shows Puga with his hands up and briefly dropping his right hand to his waistband to adjust his pants before raising his hand up again, twice.</p> <p>Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 0:00:03-00:07; 0:00:20-00:27.</p> <p>As soon as Puga turned to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep.. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.</p> <p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Several shots were fired at Puga after he fell to the ground.</p> <p>Ex. 1 to Le Decl., Kee Dep. 68:17-24; Ex. 3 to Le Decl., 25:8-12; Ex. 5 to Le Decl., Vaccari Dep. 43:11-24; Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 0:01:04-01:12; Ex. 11 to Le Decl., Rubalcava Dashcam Video at 0:42:37-42:45.</p> <p>After Puga fell to the ground, several shots are fired and there was a pause before the final two, almost simultaneous volleys of shots from two different firearms are heard.</p> <p>Ex. 10 to Le Decl., Erin Magerino Cellphone Video at 01:02-01:10.</p>
<p>29. After the first volley, Kee ran away from Puga, slid on to the ground, and repositioned himself in a prone position to avoid any further gunfire from Puga. <i>Evidence:</i> Kee Dep. 30:23-32:9, 83:3-21, Ex. O.</p>	<p><u>Disputed</u> that Kee went to the ground to avoid gunfire from <i>Puga</i>.</p> <p>Kee went to the prone position on the ground because he was aware that Rubalcava was behind him and he did not want to run the risk of getting hit by friendly fire.</p> <p>Ex. 20 to Le Decl., Kee Int. 74:23-75:2.</p>
<p>30. Kee regained sight of Puga who was fleeing in a northwest direction past the intersection. Kee could see Puga's left ribcage area, and Puga had the gun in his left hand, pointing it back towards Kee's location. <i>Evidence:</i> Kee Dep. 83:16-84:3, Ex. O.</p>	<p><u>Objection.</u> Compound.</p> <p><u>Disputed</u> that only Puga's left ribcage was exposed to Kee while Puga was running in a northwest direction. Further <u>disputed</u> that Puga had a gun in his hand. Further <u>disputed</u> that Puga pointed anything back towards Kee's location while he was running.</p> <p>As soon as Puga turned to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep.. 60:20-61:1; Ex. 5 to Le Decl., Vaccari</p>

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3		Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.
4		Puga never grabbed or aggressively reached for anything prior to the shots.
5		Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.
6		Puga never had a gun in his hand.
7		Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.
8		Puga never pointed his hand or a weapon in any specific direction or at any officer.
9		Ex. 5 to Le Decl., Vaccari Dep. 64:8-17; Ex. 8 to Le Decl., Gonzalez Dep. 97:1-6.
10		Puga never fired a weapon at any officer.
11		Ex. 7 to Le Decl., Mangerino Dep. 37:14-16; Ex. 8 to Le Decl., Gonzalez Dep. 132:22-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.
12		Neither smoke nor any muzzle flash ever came from Puga.
13		Ex. 3 to Le Decl., Blackwood Dep. 20:10-12; Ex. 4 to Le Decl., Adams Dep. 36:12-18; Ex. 5 to Le Decl., Vaccari Dep. 48:14-20; Ex. 8 to Le Decl., Gonzalez Dep. 99:8-25.
14		None of the videos capturing the incident show Puga with a gun in his hand.
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Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 1 to Le Decl., Kee Dep. 7:16-18; Ex. 5 to Le Decl., Vaccari Dep. 9:15-18.</p> <p>None of the videos capturing the incident show Puga ever pointing a gun at anyone.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:22-24; Ex. 5 to Le Decl., Vaccari Dep. 9:19-21.</p> <p>None of the videos capturing the incident show Puga ever firing a gun.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:19-21.</p> <p>None of the videos capturing the incident show any muzzle flash coming from the area Puga was at.</p> <p>Ex. 1 to Le Decl., Kee Dep. 92:14-16; Ex. 2 to Le Decl., Rubalcava Dep. 93:17-19</p> <p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p> <p>There were no bullet impacts or casings found near the area of the initial shooting that would support the allegation that Mr. Puga fired a weapon at anyone.</p> <p>Clark Decl. ¶ 17a</p> <p>As Puga was running, he never turned around to look at the officers.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 100:13-17.</p> <p>While Puga was running, his hands were moving in a running motion.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 8 to Le Decl., Gonzalez Dep. 116:16-21.</p> <p>None of the videos that captured the shooting ever show Puga turn back towards the officers or point his hand back towards the officers.</p> <p>Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 0:00:50-01:44; Ex. 11 to Le Decl., Rubalcava Dashcam Video at 0:42:23-42:47; Kee Dashcam Video at 46:47-47:07.</p> <p>When asked during his interview with detectives after the incident as to what caused Rubalcava to fire his second volley, Rubalcava answered that Puga was still fleeing but that Puga was not doing anything with any alleged weapon.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 55:8-22.</p> <p>Blackwood was trying to assess while he was firing by looking for a gun but could not see Puga's hands and therefore never saw Puga with a gun while Puga was running away.</p> <p>Ex. 3 to Le Decl., 24:10-13, 30:23-31:11, 45:23-46:2.</p> <p>During the time Blackwood was shooting at Puga, Blackwood could not see Puga's hands.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 36:18-20.</p> <p>Puga sustained multiple gunshot wounds to his backside.</p> <p>Ex. 19 to Le Decl., Jong Dep. 21:21-22.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p data-bbox="899 321 1503 405">Many of the gunshots wounds have a back-to-front trajectory.</p> <p data-bbox="899 447 1503 531">Ex. 19 to Le Decl., Jong Dep. 45:25-46:4.</p> <p data-bbox="899 573 1503 657">Some of the gunshot wounds had an upward trajectory.</p> <p data-bbox="899 699 1503 741">Ex. 19 to Le Decl., Jong Dep. 46:5-8.</p> <p data-bbox="899 783 1503 951">Puga sustained a gunshot wound that entered the mid left back with a trajectory of back-to-front, left-to-right, and upward.</p> <p data-bbox="899 993 1503 1077">Ex. 19 to Le Decl., Jong Dep. 9:2-4, 9:22-10:4, 10:25-11:2.</p> <p data-bbox="899 1119 1503 1287">In order to get the gunshot wound to the mid left back, the back would have had to been exposed to the muzzle of the gun.</p> <p data-bbox="899 1329 1503 1413">Ex. 19 to Le Decl., Jong Dep. 11:22-13:23.</p> <p data-bbox="899 1455 1503 1581">Puga sustained a gunshot wound to the lower left back with a trajectory of back-to-front, left-to-right, and upward.</p> <p data-bbox="899 1623 1503 1707">Ex. 19 to Le Decl., Jong Dep. 13:17-20, 14:14-16.</p> <p data-bbox="899 1749 1503 1896">The gunshot wound to the lower left back is consistent with Puga's back directly facing the shooter.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>31. Kee shot at Puga to begin the second volley because Puga posed a continuing threat of immediate death or serious harm: Puga still had the gun; Puga had already fired upon Kee and Rubalcava based on the muzzle flashes Kee saw come from Puga's gun; Puga had used a gun in the earlier freeway shooting incident, indicating to Kee that Puga would not hesitate to use a gun; and Puga was now heading towards a house that could result in a hostage situation. Kee therefore fired his second volley of gunfire when Puga continued to run in the direction of the house.</p> <p><i>Evidence:</i> Kee Dep. 82:10-85:7, Ex. O.</p>	<p>Ex. 19 to Le Decl., Jong Dep. 31:7-13.</p> <p><u>Objection.</u> Compound.</p> <p><u>Objection.</u> Lay witness-ultimate issue; legal conclusion. Fed. R. Evid. 701; <i>United States v. Bohn</i>, 622 F.3d 1129, 1138 (9th Cir. 2010).</p> <p><u>Objection.</u> Expert witness-legal conclusion. Fed. R. Evid. 702(a); <i>Hangarter v. Provident Life & Accident Ins. Co.</i>, 373 F.3d 998, 1016 (9th Cir.2004).</p> <p><u>Disputed</u> that Puga posed ever posed an immediate threat of death or serious bodily harm. Further <u>disputed</u> that Puga ever had a gun in his hand while in front of the Expedition or while running. Further <u>disputed</u> that Puga ever fired a weapon at anyone. Further <u>disputed</u> that it was reasonable for Kee to believe that Puga would not hesitate to use a gun. Further <u>disputed</u> that it was reasonable for Kee to believe that Puga posed a threat to the residents and would take hostages as Puga was nowhere near any houses during the shooting and had likely changed directions away from any house by the time Kee fired his second volley.</p> <p>As soon as Puga turned to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep.. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never had a gun in his hand.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never pointed his hand or a weapon in any specific direction or at any officer.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 64:8-17; Ex. 8 to Le Decl., Gonzalez Dep. 97:1-6.</p> <p>Puga never fired a weapon at any officer.</p> <p>Ex. 7 to Le Decl., Mangerino Dep. 37:14-16; Ex. 8 to Le Decl., Gonzalez Dep. 132:22-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Neither smoke nor any muzzle flash ever came from Puga.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 20:10-12; Ex. 4 to Le Decl., Adams Dep. 36:12-18; Ex. 5 to Le Decl., Vaccari Dep. 48:14-20; Ex. 8 to Le Decl., Gonzalez Dep. 99:8-25.</p> <p>None of the videos capturing the incident show Puga with a gun in his hand.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:16-18; Ex. 5 to Le Decl., Vaccari Dep. 9:15-18.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>None of the videos capturing the incident show Puga ever pointing a gun at anyone.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:22-24; Ex. 5 to Le Decl., Vaccari Dep. 9:19-21.</p> <p>None of the videos capturing the incident show Puga ever firing a gun.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:19-21.</p> <p>None of the videos capturing the incident show any muzzle flash coming from the area Puga was at.</p> <p>Ex. 1 to Le Decl., Kee Dep. 92:14-16; Ex. 2 to Le Decl., Rubalcava Dep. 93:17-19</p> <p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p> <p>There were no bullet impacts or casings found near the area of the initial shooting that would support the allegation that Mr. Puga fired a weapon at anyone.</p> <p>Clark Decl. ¶ 17a</p> <p>As Puga was running, he never turned around to look at the officers.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 100:13-17.</p> <p>While Puga was running, his hands were moving in a running motion.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 116:16-21.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>None of the videos that captured the shooting ever show Puga turn back towards the officers or point his hand back towards the officers.</p> <p>Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 0:00:50-01:44; Ex. 11 to Le Decl., Rubalcava Dashcam Video at 0:42:23-42:47; Kee Dashcam Video at 46:47-47:07.</p> <p>When asked during his interview with detectives after the incident as to what caused Rubalcava to fire his second volley, Rubalcava answered that Puga was still fleeing but that Puga was not doing anything with any alleged weapon.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 55:8-22.</p> <p>Blackwood was trying to assess while he was firing by looking for a gun but could not see Puga's hands and therefore never saw Puga with a gun while Puga was running away.</p> <p>Ex. 3 to Le Decl., 24:10-13, 30:23-31:11, 45:23-46:2.</p> <p>During the time Blackwood was shooting at Puga, Blackwood could not see Puga's hands.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 36:18-20.</p> <p>Vaccari's impression what that as Puga was running, he had been struck by gunfire because it appeared that Puga was staggering.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 52:19-53:1.</p> <p>Approximately 5 to 8 seconds elapsed between Kee's first volley and when he started firing his second volley.</p>

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	<p>Ex. 1 to Le Decl., Kee Dep. 54:5-9.</p> <p>When Puga reached the northwest corner, he changed directions and started running north instead of towards the house on the corner.</p> <p>Ex. 4 to Le Decl., Adams Dep. 50:15-21; Ex. 7 to Le Decl., Mangerino Dep. 34:3-12.</p> <p>Puga then fell forward onto his chest and stomach and onto the ground with his hands beside him on the northwest shoulder near the southbound lane, some distance from the northwest corner.</p> <p>Ex. 1 to Le Decl., Kee Dep. 37:10-13; Ex. 5 to Le Decl., Vaccari Dep. 53:11-21; Ex. 7 to Le Decl., Mangerino Dep. 60:9-61:13.</p> <p>Officer Rubalcava, Officer Blackwood, Sergeant Kee, and Deputy Adams violated standard police practices and training when they shot at Mr. Puga while he was running away. Mr. Puga did not present an immediate threat of death or serious bodily injury as he was running and the officers failed to reassess and overreacted when they fired subsequent volleys when Mr. Puga was running.</p> <p>Clark Decl. ¶ 17.</p> <p>Under the facts of this case, there was no immediate defense of life situation while Mr. Puga was running away.</p> <p>Clark Decl. ¶ 17a.</p> <p>Officers are trained that they may use deadly force against a fleeing suspected felon to prevent escape only if the officer has probable cause to believe</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>that the suspect poses a significant threat of death or serious physical injury to the officers or others.</p> <p>Clark Decl. ¶ 17c.</p> <p>There is evidence that this was likely a situation of contagious fire.</p> <p>Clark Decl. ¶ 17d.</p>
<p>32. Rubalcava fired two volleys at Puga—approximately five in the first volley, and five to eight in the second. <i>Evidence.</i> Rubalcava Dep. 14:3-11, Ex. Q.</p>	<p><u>Disputed</u> that Rubalcava fired only two volleys.</p> <p>Just prior to Puga going to the ground, he was staggering as if he had been struck by gunfire.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 52:19-53:4.</p> <p>There were gunshots immediately before Puga went to the ground.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 53:5-7.</p> <p>Several shots were fired at Puga after he fell to the ground.</p> <p>Ex. 1 to Le Decl., Kee Dep. 68:17-24; Ex. 3 to Le Decl., 25:8-12; Ex. 5 to Le Decl., Vaccari Dep. 43:11-24; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:01:04-01:12; Ex. 11 to Le Decl., Blackwood MVARs Part 4 at 0:42:37-42:45.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>After Puga fell to the ground, several shots are fired and there is a pause before the final two, almost simultaneous volleys of shots from two different firearms are heard.</p> <p>Ex. 10 to Le Decl., Erin Magerino Cellphone Video at 01:02-01:10.</p> <p>As the last volleys are going off, Puga can be seen jerking on the ground as if struck by the gunshots.</p> <p>Ex. 10 to Le Decl., Erin Magerino Cellphone Video at 01:06-01:10.</p>
<p>33. In the first volley, Rubalcava returned fire when Puga turned towards Rubalcava and fired the gun. Rubalcava shot at Puga's chest-abdomen area.</p> <p><i>Evidence:</i> Rubalcava Dep. 17:13-18:20, 80:4-81:11, Ex. Q.</p>	<p><u>Disputed</u> that Rubalcava returned fire and that Puga ever fired a weapon towards anyone. Further <u>disputed</u> that Rubalcava shot at Puga's chest-abdomen area.</p> <p>As soon as Puga turned to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never had a gun in his hand.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never pointed his hand or a weapon in any specific direction or at any officer.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 64:8-17; Ex. 8 to Le Decl., Gonzalez Dep. 97:1-6.</p> <p>Puga never fired a weapon at any officer.</p> <p>Ex. 7 to Le Decl., Mangerino Dep. 37:14-16; Ex. 8 to Le Decl., Gonzalez Dep. 132:22-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Neither smoke nor any muzzle flash ever came from Puga.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 20:10-12; Ex. 4 to Le Decl., Adams Dep. 36:12-18; Ex. 5 to Le Decl., Vaccari Dep. 48:14-20; Ex. 8 to Le Decl., Gonzalez Dep. 99:8-25.</p> <p>None of the videos capturing the incident show Puga with a gun in his hand.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:16-18; Ex. 5 to Le Decl., Vaccari Dep. 9:15-18.</p> <p>None of the videos capturing the incident show Puga ever pointing a gun at anyone.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:22-24; Ex. 5 to Le Decl., Vaccari Dep. 9:19-21.</p> <p>None of the videos capturing the incident show Puga ever firing a gun.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:19-21.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>None of the videos capturing the incident show any muzzle flash coming from the area Puga was at.</p> <p>Ex. 1 to Le Decl., Kee Dep. 92:14-16; Ex. 2 to Le Decl., Rubalcava Dep. 93:17-19</p> <p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p> <p>There were no bullet impacts or casings found near the area of the initial shooting that would support the allegation that Mr. Puga fired a weapon at anyone.</p> <p>Clark Decl. ¶ 17a.</p> <p>Puga sustained ten gunshot wounds: one to the mid left back, one to the lower left back, one to the middle right buttock, one to the front of the left thigh, one to the side of the left thigh, one to the back of the left thigh, one to the lateral left knee, two to the anterior right lower leg, and one to the right foot.</p> <p>Ex. 19 to Le Decl., Jong Dep. 9:2-4, 9:22-10:4, 10:25-11:2, 13:17-20, 14:14-16, 14:17-20, 15:10-16:2, 16:8-21, 17:3-16, 17:20-18:19, 20:3-9, 20:25-21:10, 21:19-20.</p>
34. Rubalcava was located on the dirt area near the left-front bumper area of Puga's vehicle when he shot the first volley.	Disputed that Rubalcava had reached near the left-front bumper area of Puga's vehicle at the time of the shooting. Kee and Rubalcava never got

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p><i>Evidence:</i> Rubalcava Dep. 26:8-11, Ex. Q.</p>	<p>to the area near the utility pole. Kee and Rubalcava were further back at the time the shooting started and therefore could not have seen Puga's waistband and the alleged gun in his waistband.</p> <p>There was an electrical pole on the southwest corner of the intersection that was almost parallel to the front of the Expedition.</p> <p>Ex. 1 to Le Decl., Kee Dep. 26:22-27:9; Ex. 15 to Le Decl., Photograph of Scene.</p> <p>In the Erin Mangerino cellphone video of the incident, moments before the shooting, two figures can be seen standing without cover in the street, partially obscured by the utility pole before backing away in a southern direction, away from the utility pole, and out of frame.</p> <p>Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 0:00:29-00:53.</p> <p>Erin Mangerino was unable to see any officers standing on her side of Peach Street.</p> <p>Ex. 7 to Le Decl., Mangerino Dep. 53:11-22.</p> <p>Rubalcava was side by side and to the right of Kee while they were approaching and when Kee started firing.</p> <p>Ex. 1 to Le Decl., Kee Dep. 29:10-19, 30:16-22.</p> <p>Rubalcava was firing in a northeast direction during his first volley.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 21:16-19.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>35. During the second volley, Rubalcava shot Puga as he was fleeing with the gun. Rubalcava still considered Puga an immediate threat because he still had the gun in his hand, and Puga was heading towards a residence, creating a risk of a hostage situation.</p> <p><i>Evidence:</i> Rubalcava Dep. 18:18-19:6, 23:1-14, 86:23-87:8, Ex. Q.</p>	<p><u>Objection.</u> Vague as to “the second volley.”</p> <p><u>Disputed</u> that Puga was fleeing with a gun in his hand. Further <u>disputed</u> that Puga posed an immediate threat while he was running. Further <u>disputed</u> that Puga was heading towards a residence as he had likely had changed directions away from any house by the time Rubalcava fired his second volley. Further <u>disputed</u> that Puga ever posed a risk of a hostage situation.</p> <p>Puga never had a gun in his hand.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Neither smoke nor any muzzle flash ever came from Puga.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 20:10-12; Ex. 4 to Le Decl., Adams Dep. 36:12-18; Ex. 5 to Le Decl., Vaccari Dep. 48:14-20; Ex. 8 to Le Decl., Gonzalez Dep. 99:8-25.</p> <p>None of the videos capturing the incident show Puga with a gun in his hand.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:16-18; Ex. 5 to Le Decl., Vaccari Dep. 9:15-18.</p> <p>None of the videos capturing the incident show any muzzle flash coming from the area Puga was at.</p> <p>Ex. 1 to Le Decl., Kee Dep. 92:14-16; Ex. 2 to Le Decl., Rubalcava Dep. 93:17-19.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p> <p>There was an approximately 5 to 10 second pause between Rubalcava's first volley and second volley.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 14:12-18.</p> <p>When Puga reached the northwest corner, he changed directions and started running north instead of towards the house on the corner.</p> <p>Ex. 4 to Le Decl., Adams Dep. 50:15-21; Ex. 7 to Le Decl., Mangerino Dep. 34:3-12.</p> <p>Puga then fell forward onto his chest and stomach and onto the ground with his hands beside him on the northwest shoulder near the southbound lane, some distance from the northwest corner.</p> <p>Ex. 1 to Le Decl., Kee Dep. 37:10-13; Ex. 5 to Le Decl., Vaccari Dep. 53:11-21; Ex. 7 to Le Decl., Mangerino Dep. 60:9-61:13.</p> <p>Officer Rubalcava, Officer Blackwood, Sergeant Kee, and Deputy Adams violated standard police practices and training when they shot at Mr. Puga while he was running away. Mr. Puga did not present an immediate threat of death or serious bodily injury as he was running and the officers failed to reassess and overreacted when they fired subsequent volleys when Mr. Puga was running.</p> <p>Clark Decl. ¶ 17.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Under the facts of this case, there was no immediate defense of life situation while Mr. Puga was running away.</p> <p>Clark Decl. ¶ 17a. Officers are trained that they may use deadly force against a fleeing suspected felon to prevent escape only if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officers or others.</p> <p>Clark Decl. ¶ 17c.</p> <p>There is evidence that this was likely a situation of contagious fire.</p> <p>Clark Decl. ¶ 17d.</p>
<p>36. During the second volley, Rubalcava was standing behind the driver's side door of Blackwood's patrol vehicle, and shooting northbound on Peach Street. <i>Evidence:</i> Rubalcava Dep. 45:20-46:7, 51:3-8, Ex. Q.</p>	<p><u>Objection.</u> Vague as to "the second volley."</p> <p><u>Undisputed.</u></p>
<p>37. Rubalcava did not give Puga a verbal warning that lethal force would be used because there was no opportunity to do so. <i>Evidence:</i> Rubalcava Dep. 79:6-80:19, Ex. Q.</p>	<p><u>Objection.</u> Vague as to time.</p> <p><u>Disputed</u> that Rubalcava did not have the opportunity to give Puga a verbal warning that lethal force would be used.</p> <p>The officers had time to provide Mr. Puga with a warning that deadly force was going to be used prior to the</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>shooting as the officers were able to issue commands to "get your hands up" prior to the shooting.</p> <p>Clark Decl. ¶ 19.</p> <p>The officers also had time to provide an additional warning that deadly force was going to be used in between their first and subsequent volleys of shots as Puga was simply running and then fell to the ground after being struck by shots.</p> <p>Clark Decl. ¶ 19.</p>
<p>38. Blackwood fired 20 rounds at Puga in two separate volleys. <i>Evidence:</i> Blackwood Dep. 10:11-21, 34:18-38:5, Ex. P.</p>	<p><u>Disputed</u> that Blackwood only fired two volleys.</p>
<p>39. Blackwood saw the gun in Puga's hand when he fired the first volley. Blackwood aimed at Puga's torso and left side while Puga was hunched over, not yet running. <i>Evidence.</i> Blackwood Dep. 28:16-29:20, 53:14-55:7, Ex. P.</p>	<p><u>Disputed</u> that Blackwood saw the gun in Puga's hand when he fired his first volley. <u>Disputed</u> that Puga was not already in the process of running when Blackwood fired his first volley.</p> <p>While at the front of the vehicle, Puga was positioned in the middle of the hood.</p> <p>Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 00:00-00:52.</p> <p>As soon as Puga turned to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep.. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.</p> <p>Puga had just cleared the front of the vehicle when Blackwood started firing.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 28:20-23</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never had a gun in his hand.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>None of the videos capturing the incident show Puga with a gun in his hand.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:16-18; Ex. 5 to Le Decl., Vaccari Dep. 9:15-18.</p> <p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p> <p>During the time Blackwood was shooting at Puga, Blackwood could not see Puga's hands.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 36:18-20.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>40. Blackwood paused his shooting when he saw Puga stumble. Blackwood fired the second volley when Puga started to run because Puga still had the gun which he could have fired at Blackwood or another officer, and Puga was running towards a house, which could have led to a hostage situation.</p> <p><i>Evidence.</i> Blackwood Dep. 29:21-31:18, 53:14-55:7, Ex. P.</p>	<p><u>Objection.</u> Compound.</p> <p><u>Objection.</u> Vague as to time “Puga started to run.”</p> <p><u>Disputed</u> that Puga ever had a gun in his hand while he was running. Further <u>disputed</u> that Puga was running towards a house when Blackwood started firing his second volley. Further <u>disputed</u> that there is evidence Puga posed a threat of a hostage situation.</p> <p>As soon as Puga turned to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never had a gun in his hand.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never pointed his hand or a weapon in any specific direction or at any officer.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 5 to Le Decl., Vaccari Dep. 64:8-17; Ex. 8 to Le Decl., Gonzalez Dep. 97:1-6.</p> <p>Puga never fired a weapon at any officer.</p> <p>Ex. 7 to Le Decl., Mangerino Dep. 37:14-16; Ex. 8 to Le Decl., Gonzalez Dep. 132:22-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Neither smoke nor any muzzle flash ever came from Puga.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 20:10-12; Ex. 4 to Le Decl., Adams Dep. 36:12-18; Ex. 5 to Le Decl., Vaccari Dep. 48:14-20; Ex. 8 to Le Decl., Gonzalez Dep. 99:8-25.</p> <p>None of the videos capturing the incident show Puga with a gun in his hand.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:16-18; Ex. 5 to Le Decl., Vaccari Dep. 9:15-18.</p> <p>None of the videos capturing the incident show Puga ever pointing a gun at anyone.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:22-24; Ex. 5 to Le Decl., Vaccari Dep. 9:19-21.</p> <p>None of the videos capturing the incident show Puga ever firing a gun.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:19-21.</p> <p>None of the videos capturing the incident show any muzzle flash coming from the area Puga was at.</p> <p>Ex. 1 to Le Decl., Kee Dep. 92:14-16; Ex. 2 to Le Decl., Rubalcava Dep. 93:17-19</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p> <p>There were no bullet impacts or casings found near the area of the initial shooting that would support the allegation that Mr. Puga fired a weapon at anyone.</p> <p>Clark Decl. ¶ 17a</p> <p>As Puga was running, he never turned around to look at the officers.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 100:13-17.</p> <p>While Puga was running, his hands were moving in a running motion.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 116:16-21.</p> <p>None of the videos that captured the shooting ever show Puga turn back towards the officers or point his hand back towards the officers.</p> <p>Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 0:00:50-01:44; Ex. 11 to Le Decl., Rubalcava Dashcam Video at 0:42:23-42:47; Kee Dashcam Video at 46:47-47:07.</p> <p>When asked during his interview with detectives after the incident as to what caused Rubalcava to fire his second volley, Rubalcava answered that Puga was still fleeing but that Puga was not doing anything with any alleged weapon.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 55:8-22.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Blackwood was trying to assess while he was firing by looking for a gun but could not see Puga's hands and therefore never saw Puga with a gun while Puga was running away.</p> <p>Ex. 3 to Le Decl., 24:10-13, 30:23-31:11, 45:23-46:2.</p> <p>During the time Blackwood was shooting at Puga, Blackwood could not see Puga's hands.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 36:18-20.</p> <p>Vaccari's impression what that as Puga was running, he had been struck by gunfire because it appeared that Puga was staggering.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 52:19-53:1.</p> <p>When Puga reached the northwest corner, he changed directions and started running north instead of towards the house on the corner.</p> <p>Ex. 4 to Le Decl., Adams Dep. 50:15-21; Ex. 7 to Le Decl., Mangerino Dep. 34:3-12.</p> <p>Puga then fell forward onto his chest and stomach and onto the ground with his hands beside him on the northwest shoulder near the southbound lane, some distance from the northwest corner.</p> <p>Ex. 1 to Le Decl., Kee Dep. 37:10-13; Ex. 5 to Le Decl., Vaccari Dep. 53:11-21; Ex. 7 to Le Decl., Mangerino Dep. 60:9-61:13.</p> <p>Officer Rubalcava, Officer Blackwood, Sergeant Kee, and Deputy Adams violated standard police practices and training when they shot at Mr. Puga</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>while he was running away. Mr. Puga did not present an immediate threat of death or serious bodily injury as he was running and the officers failed to reassess and overreacted when they fired subsequent volleys when Mr. Puga was running.</p> <p>Clark Decl. ¶ 17.</p> <p>Under the facts of this case, there was no immediate defense of life situation while Mr. Puga was running away.</p> <p>Clark Decl. ¶ 17a.</p> <p>Officers are trained that they may use deadly force against a fleeing suspected felon to prevent escape only if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officers or others.</p> <p>Clark Decl. ¶ 17c.</p> <p>There is evidence that this was likely a situation of contagious fire.</p> <p>Clark Decl. ¶ 17d.</p>
<p>41. After Puga went down to the ground, Rubalcava and a deputy handcuffed him and found Puga's gun tucked under his stomach where both his hands were also located.</p> <p><i>Evidence:</i> Rubalcava Dep. 85:25-86:22, Ex. Q.</p>	<p><u>Disputed</u> that Puga fell with his hands underneath his body. Further <u>disputed</u> to the extent that this suggest Puga was holding a gun while he was running or that a gun was sticking out of Puga's waistband while he was running.</p> <p>Puga never had a gun in his hand.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24.</p> <p>None of the videos capturing the incident show Puga with a gun in his hand.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:16-18; Ex. 5 to Le Decl., Vaccari Dep. 9:15-18.</p> <p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p> <p>Just prior to Puga going to the ground, he was staggering as if he had been struck by gunfire.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 52:19-53:4.</p> <p>Puga then fell forward onto his chest and stomach and onto the ground with his hands beside him on the northwest shoulder near the southbound lane, some distance from the northwest corner.</p> <p>Ex. 1 to Le Decl., Kee Dep. 37:10-13; Ex. 5 to Le Decl., Vaccari Dep. 53:11-21; Ex. 7 to Le Decl., Mangerino Dep. 60:9-61:13.</p>

Moving Party's (State) Alleged Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Puga's hands were next to him when he was on the ground.</p> <p>Ex. 7 to Le Decl., Mangerino Dep. 61:7-13.</p> <p>There was no gun in either of Puga's hands immediately after Puga went to the ground.</p> <p>Ex. 4 to Le Decl., Adams Dep. 52:18-22.</p>
<p>42. Puga sustained ten gunshot wounds, but only the wound to the mid left back was fatal.</p> <p><i>Evidence:</i> Jong Dep. 21:19-22:3, Ex. U.</p>	<p><u>Disputed</u> that only the wound to the mid left back was fatal.</p> <p>Puga sustained a gunshot wound to the lower left back with a trajectory of back-to-front, left-to-right, and upward.</p> <p>Ex. 19 to Le Decl., Jong Dep. 13:17-20, 14:14-16.</p> <p>The gunshot wound to the lower left back could have also been fatal after a longer period of time.</p> <p>Ex. 19 to Le Decl., Jong Dep. 30:7-31:2.</p>
<p>43. The wound to Puga's mid left back was caused by a .223 caliber bullet.</p> <p><i>Evidence:</i> Haag Report at 2, Ex. N.</p>	<p><u>Undisputed.</u></p>

**COUNTY DEFENDANTS' ALLEGED MATERIAL FACTS AND
PLAINTIFFS' RESPONSES**

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>1. Deputy Adams went to the Academy from March to September 2018.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 5:24-25.</p>	<p><u>Objection.</u> Fed. R. Evid. 401, 402. Relevance.</p> <p>Otherwise, <u>undisputed</u></p>
<p>2. After graduation from the Academy Deputy Adams was assigned to the West Valley Detention Center for the San Bernardino County Sheriff's Department.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 6:1-3.</p>	<p><u>Objection.</u> Fed. R. Evid. 401, 402. Relevance.</p> <p>Otherwise, <u>undisputed</u></p>
<p>3. Deputy Adams was assigned to patrol starting May 2020 with the San Bernardino County Sheriff's Department.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 6:6-16.</p>	<p><u>Objection.</u> Fed. R. Evid. 401, 402. Relevance.</p> <p>Otherwise, <u>undisputed</u></p>
<p>4. From May through September 2020 Deputy Adams was in field training.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 6:6-16.</p>	<p><u>Objection.</u> Fed. R. Evid. 401, 402. Relevance.</p> <p>Otherwise, <u>undisputed</u></p>
<p>5. Sergeant Vaccari graduated from the Academy in 1997.</p> <p>Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 10:8-14.</p>	<p><u>Objection.</u> Fed. R. Evid. 401, 402. Relevance.</p> <p>Otherwise, <u>undisputed</u></p>
<p>6. After graduation from the Academy Sergeant Vaccari was assigned to West Valley Detention Center for the San Bernardino County Sheriff's Department.</p>	<p><u>Objection.</u> Fed. R. Evid. 401, 402. Relevance.</p> <p>Otherwise, <u>undisputed</u></p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 10:18-22.	
7. Sergeant Vaccari went to patrol in 2000. Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 10:21-11:3.	<u>Objection.</u> Relevance. Otherwise, <u>undisputed</u>
8. Sergeant Vaccari was promoted to Sergeant in January 2012. Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 11:4-7.	<u>Objection.</u> Relevance. Otherwise, <u>undisputed</u>
9. On February 16, 2021, CHP received reports that a white Ford SUV was involved in a shooting with another vehicle on the freeway during the evening. Clarke Decl. ¶ 11, Ex. V - Kee Depo. 14:6-9, 75:3-76:19; Clarke Decl. ¶ 12, Ex. W - Rubalcava Depo. 77:14-78:15; Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 51:11-20.	<u>Objection.</u> The cited evidence does not support the allegation that the shooting with another vehicle on the freeway occurred during the evening of February 16, 2021.
10. The Ford SUV had a funeral sticker on the back window. Clarke Decl. ¶ 11, Ex. V - Kee Depo. 76:14-19; Clarke Decl. ¶ 12, Ex. W - Rubalcava Depo. 78:4-9; Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 51:11-20.	<u>Undisputed.</u>
11. Sergeant Kee was the on-duty supervisor when the freeway shooting occurred. Clarke Decl. ¶ 11, Ex. V – Kee Depo. 75:22-76:5.	<u>Undisputed.</u>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>12. Kee spoke to the victim of the freeway shooting.</p> <p>Clarke Decl. ¶ 11, Ex. V – Kee Depo. 75:22-76:5</p>	<p><u>Objection.</u> Fed. R. Evid. 401, 402. Relevance.</p> <p><u>Undisputed.</u></p>
<p>13. The victim directed Kee's attention to the right passenger side door where there was a bullet hole in the door</p> <p>Clarke Decl. ¶ 11, Ex. V – Kee Depo. 75:22-76:5</p>	<p><u>Undisputed.</u></p>
<p>14. The bullet penetrated through the door and passenger seat.</p> <p>Clarke Decl. ¶ 11, Ex. V – Kee Depo. 76:6-13</p>	<p><u>Undisputed.</u></p>
<p>15. CHP were briefed regarding the shooting. Clarke Decl. ¶ 11, Ex. V – Kee Depo.</p> <p>76:25-77:14</p>	<p><u>Undisputed.</u></p>
<p>16. The shooting was classified as a felony.</p> <p>Clarke Decl. ¶ 11, Ex. V – Kee Depo. 76:25-77:14</p>	<p><u>Undisputed.</u></p>
<p>17. Because the freeway shooting was classified as a felony, the officers were permitted to conduct a felony stop.</p> <p>Clarke Decl. ¶ 11, Ex. V – Kee Depo. 76:25-77:14</p>	<p><u>Undisputed.</u></p>
<p>18. A felony stop is when an officer orders the occupants out of the vehicle without approaching, and with the weapons drawn behind cover.</p>	<p><u>Undisputed.</u></p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
Clarke Decl. ¶ 11, Ex. V – Kee Depo. 77:15-24	
<p>19. CHP Officers Blackwood and Rubalcava located the vehicle and attempted a traffic stop on February 17, 2021.</p> <p>Clarke Decl. ¶ 13, Ex. X - Blackwood Depo. 51:1-10; Clarke Decl. ¶ 12, Ex. W - Officer Rubalcava Depo. 23:21-24:6, 77:13-17; Clarke Decl. ¶ 11, Ex. V – Kee Depo. 14:6-9.</p>	<p>Disputed to the extent that this suggests CHP was in active pursuit of the vehicle after receiving the report.</p> <p>After responding to the scene of the alleged freeway shooting, CHP put out a BOLO for a white SUV.</p> <p>Ex. 1 to Le Decl., Kee Dep. 75:22-76:2, 76:14-19.</p>
<p>20. Decedent briefly yielded to the right curb with Rubalcava and Blackwood behind him.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 77:13-17; Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 51:1-10</p>	<u>Undisputed.</u>
<p>21. When they attempted to contact Puga, Puga sped away and continued the pursuit.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 68:17-69:9</p>	<u>Undisputed.</u>
<p>22. The driver of the White SUV was later identified as Hector Puga.</p> <p>Clarke ¶ 2, Ex. M – Third Amended Complaint (Dkt. 68) ¶ 25</p>	<u>Undisputed.</u>
<p>23. Hector Puga led CHP Officers Rubalcava and Blackwood on a pursuit.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 23:21-24:6; Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 51:1-10; see</p>	<u>Undisputed.</u>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
Clarke Decl. ¶ 9, Ex. K – Blackwood MVARs Fragment 01.	
24. Sergeant Kee later joined the pursuit of the white SUV. Clarke Decl. ¶ 11, Ex. V - Kee Depo.17:14-24; 75:3-21.	<u>Undisputed.</u>
25. At some point San Bernardino County Sheriff's deputies Sergeant Vaccari and Deputy Adams joined the pursuit of Mr. Puga. Clarke Decl. ¶ 9, Ex. T - Adams Depo. 9:12-10:13; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 18:15-19:3.	<u>Undisputed.</u>
26. CHP notified the Sheriff's Department through dispatch that there had been a shooting from the white SUV on the freeway. Clarke ¶ 9, Ex. T – Adams Depo. 68:17-69:9; Clarke ¶ 10, Ex. U – Vaccari Depo. 18:23-19:3; Adams Decl. ¶ 5.	
27. It was relayed to Adams and Vaccari in their patrol vehicles that there had been a shooting from the white SUV on the freeway. Clarke Decl. ¶ 9, Ex. T – Adams 68:17-69:9; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 18:23-19:3; Adams Decl. ¶ 5.	
28. Vaccari and Adams were given information that Puga had a gun in the car.	<u>Undisputed.</u>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 32:25-33:5; Clarke Decl. ¶ 9, Ex. T – Adams Decl. ¶ 5.	
29. Due to the information that Puga had a gun in the car, Adams and Vaccari believed Puga did in fact have a firearm in the vehicle. Clarke Decl. ¶ 10, Ex. U – Vaccari 32:25-33:9; Adams Decl. ¶ 5.	Objection. Argumentative. Speculation. <u>Undisputed.</u>
30. During the pursuit, no one entered or exited the vehicle. Clarke Decl. ¶ 9, Ex. T – Adams Depo. 68:17-69:9	Objection. Vague as to “the vehicle.” <u>Undisputed</u> that no one entered or exited the white Ford Expedition during the pursuit.
31. Because no one entered or exited the vehicle, Adams and Vaccari believed that the person involved in the shooting was still within the white SUV. Clarke Decl. ¶ 9, Ex. T – Adams Depo. 68:17-69:9	Objection. The cited evidence does not support the alleged fact to the extent that this suggests Adams and Vaccari had information that the person in the vehicle was involved in the earlier shooting during the pursuit. Assumes facts not in evidence that the officers knew or has information that the person in the white SUV was involved in the shooting. Objection. Speculation. Disputed that Adams and Vaccari had information during the pursuit that the person in the vehicle was involved in the earlier shooting. Adams testified that CHP informed him that the vehicle had been involved in an earlier shooting and that he based his belief that the person in the vehicle was involved in the earlier shooting

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>because later, the person allegedly produced a gun and shot at the officers.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 68:17-69:9</p>
<p>32. The pursuit terminated at the intersection of Peach Avenue and Catalpa Street in Hesperia, CA.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 10:14-18; Clarke Decl. ¶ 10, Ex. U – Vaccari 20:17-21</p>	<p><u>Undisputed.</u></p>
<p>33. The pursuit terminated because Puga's vehicle became disabled.</p> <p>Clarke ¶ 18, Ex. L – Kee MVARs p1 38-38:45</p>	<p><u>Objection.</u> Speculation.</p> <p><u>Objection.</u> Assumes facts not in evidence.</p> <p><u>Undisputed</u> to the extent that the vehicle came shortly after spike strips were successfully deployed against the vehicle.</p>
<p>34. The pursuit ended just south of Catalpa Street.</p> <p>Clarke Decl. ¶ 11, Ex. V - Kee Depo. 16:22-24.</p>	<p><u>Undisputed.</u></p>
<p>35. The pursuit lasted approximately an hour.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 24:4-6</p>	<p><u>Undisputed.</u></p>
<p>36. The passenger of the vehicle complied with commands and was safely taken into custody.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 13:4-9</p>	<p><u>Objection.</u> Vague as to “complied with commands.”</p> <p><u>Undisputed.</u></p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>37. Adams had a conversation with the passenger once she was out of the car.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 13:10-12</p>	<p><u>Undisputed.</u></p>
<p>38. The passenger did not know whether Puga had a gun or not.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 13:13-25</p>	<p><u>Undisputed.</u></p>
<p>39. Hector Puga refused to exit the vehicle for over an hour.</p> <p>Clarke Decl. ¶ 12, Ex. W - Rubalcava Depo 27:14-19; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 24:5-11.</p>	<p><u>Undisputed.</u></p>
<p>40. Numerous repeated commands were given for Hector Puga to exit the vehicle.</p> <p>Clarke Decl. ¶ 11, Ex. V - Kee 19:10-13; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 23:15-24:14</p>	<p><u>Objection.</u> Vague as to time.</p> <p><u>Undisputed</u> to the extent that commands were given to Puga to exit the vehicle in between the time the pursuit terminated and when Puga exited the vehicle.</p>
<p>41. Puga behaved erratically and was agitated, asking to call his sister and his mom.</p> <p>Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 54:25-55:7</p>	<p><u>Objection.</u> Vague and ambiguous as to “erratically” and “agitated.”</p> <p><u>Objection.</u> Argumentative.</p>
<p>42. Puga wanted to have a cigarette.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 30:4-9</p>	<p><u>Objection.</u> Vague as to time. Vague as to “have a cigarette.”</p> <p><u>Undisputed</u> that at some point while Puga was stopped and inside the Expedition, he told the officers that he wanted to smoke a cigarette.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>43. Puga was yelling and cursing.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 30:4-9</p>	<p><u>Objection.</u> Vague as to time.</p> <p><u>Disputed</u> to the extent that this alleges that Puga was yelling in anger or in aggression and that he was “yelling and cursing” the entire time he was stopped inside his vehicle.</p> <p>There was a helicopter flying overhead for the majority of the officers’ interactions with Puga while the Expedition was stopped near Peach and Catalpa. A reasonable inference is that Puga was yelling in order to communicate over the noise of the helicopter.</p> <p>See Ex. 1 to Le Decl., Kee Dep. 28:7-15; Ex. 3 to Le Decl., Blackwood Dep. 59:23-61:1.</p>
<p>44. Puga was throwing miscellaneous items out of his vehicle window.</p> <p>Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 54:25-55:7</p>	<p><u>Objection.</u> Vague as to time.</p> <p><u>Disputed</u> to the extent that this alleges Puga was throwing miscellaneous items out of his vehicle window the entire time he was inside the vehicle.</p>
<p>45. Puga was seen twisting and turning his body while he was in his vehicle.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 16:17-17:13</p>	<p><u>Objection.</u> Vague as to time.</p>
<p>46. Puga was reaching around in the vehicle</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 16:17-17:13</p>	<p><u>Objection.</u> Vague as to time and vague and ambiguous as to “reaching around.”</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>47. Puga was leaning over in his car.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 16:17-17:13</p>	<p><u>Objection.</u> Vague as to time and vague and ambiguous as to “leaning over.”</p>
<p>48. After approximately 50 minutes of Puga refusing to exit the vehicle, Puga's rear windshield was broken.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 27:25-28:2, 28:16-24; Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 43:2-10; Clarke Decl. ¶ 11, Ex. V – Kee Depo. 20:22-25; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 28:22-24; Adams Decl. ¶ 8, Ex. L – Kee MVARs Pt. 1 at 38:48-1:4 and Kee MVARs Pt. 2 1:4-1:28</p>	<p><u>Objection.</u> The cited evidence does not support the alleged fact that the windshield was broken after 50 minutes of Puga refusing to exit the vehicle. Vague and ambiguous as to time.</p> <p><u>Disputed</u> to the extent that this alleges that Puga's rear windshield was broken approximately 50 minutes after the pursuit had ended and Puga was sitting in the stopped car for 50 minutes, refusing to exit the car, before Expedition's rear windshield was broken.</p> <p>Approximately 23 minutes elapsed between the time the Expedition came to a stop near Catalpa and Peach and when the Expedition's rear windshield was broken.</p> <p>See Ex. F to Esquivel Decl., Blackwood MVARs Part 3 at 9:09-34:38.</p>
<p>49. Puga's window was broken to deploy less lethal through it.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 27:25-28:2, 28:16-24, Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 42:20-43:1; Clarke Decl. ¶ 11, Ex. V – Kee Depo. 20:22-25; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 28:22-24</p>	<p><u>Undisputed.</u></p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>50. Because Puga would not exit the vehicle despite commands, Vaccari deployed pepper balls into the vehicle.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 27:25-28:4; Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 42:20-43:1; Clarke Decl. ¶ 11, Ex. V – Kee Depo. 22:1-6; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 14:22-16:2; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 27:1-9, 30:10-12</p>	<p><u>Undisputed.</u></p>
<p>51. The pepper balls were used to make the vehicle's environment uncomfortable and force Puga to exit the vehicle</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 29:14-17; Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 19:10-13; Clarke Decl. ¶ 11, Ex. V – Kee Depo. 20:18-21; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 14:22-16:2, 18:10-19:4; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 27:16-23</p>	<p><u>Undisputed.</u></p>
<p>52. The effects of pepper balls on a person include runny nose.</p> <p>Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 27:19-28:4</p>	<p><u>Undisputed.</u></p>
<p>53. The effects of pepper balls on a person include coughing.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 18:10-18</p>	<p><u>Undisputed.</u></p>
<p>54. The effects of pepper balls on a person include impaired eyesight.</p>	<p><u>Undisputed.</u></p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 27:19-28:4	
55. The effects of pepper balls on a person include an urge to get away from the pepper balls. Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 27:19-28:4	<u>Undisputed.</u>
56. Vaccari was positioned to the rear of Puga's vehicle along the passenger side of one of the CHP units. Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 30:13-16	<u>Objection.</u> Vague as to time. <u>Undisputed</u> to the extent that Vaccari was positioned to the rear of Puga's vehicle along the passenger side of one of the CHP units when he deployed the pepper balls into the Expedition.
57. Vaccari was in a position of cover behind an open door, when he deployed the pepper balls. Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 30:17-21	<u>Undisputed.</u>
58. Kee was talking with Puga to attempt to get him out of the vehicle, however. Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 30:25-31:18	<u>Undisputed.</u>
59. When Puga did not respond to Kee's attempt to get him out of the vehicle, Vaccari deployed pepper balls to attempt to get Puga to evacuate the vehicle. Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 30:25-31:18	<u>Objection.</u> Vague as to time. Vague and ambiguous as phrased. <u>Undisputed</u> to the extent that the officers would ask Puga to get out of the vehicle and when they did not get a response, Vaccari would introduce pepper balls into the car and that this would have every few minutes.

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>60. During this period of over an hour, Puga would say he would come out of the vehicle but then would not exit.</p> <p>Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 31:22-32:7</p>	<p><u>Undisputed.</u></p>
<p>61. Several times Puga opened the door and the officers would wait for Puga to come out.</p> <p>Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 31:22-32:7; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 16:17-17:13</p>	<p><u>Undisputed.</u></p>
<p>62. Instead of Puga coming out though, he would stay in his vehicle and close the door.</p> <p>Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 31:22-32:7; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 16:17-17:13</p>	<p><u>Undisputed.</u></p>
<p>63. As a result, more pepper balls were deployed.</p> <p>Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 31:22-32:7; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 16:17-17:13</p>	<p><u>Undisputed.</u></p>
<p>64. Vaccari estimated he deployed between 120-150 pepper balls.</p> <p>Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 31:19-21</p>	<p><u>Undisputed.</u></p>
<p>65. Kee estimated Vaccari deployed probably 100, at least 90 pepper balls.</p> <p>Clarke Decl. ¶ 11, Ex. V – Kee Depo. 22:7-13</p>	<p><u>Undisputed.</u></p>
<p>66. Blackwood estimated Vaccari deployed 100-150 pepper balls.</p>	<p><u>Undisputed.</u></p>

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Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 58:19-59:7	
67. Adams estimated Vaccari deployed approximately 75-100 pepper balls. Clarke Decl. ¶ 9, Ex. T – Adams Depo. 15:21-16:2	<u>Undisputed.</u>
68. The pepper balls were deployed in the span of 26 minutes. Clarke Decl. ¶ 18, Ex. L – Kee MVARs Pt. 2 2:05-28:48	<u>Undisputed.</u>
69. Sergeant Vaccari would deploy approximately a round of pepper balls. Clarke Decl. ¶ 18, Ex. L – Kee MVARs Pt. 2 Part 2 2:05-28:48	<u>Objection.</u> Vague and ambiguous as phrased. Vague as to time. Vague as to “approximately a round of pepper balls.”
70. Then Vaccari would give Puga time to comply before deploying more rounds. Clarke Decl. ¶ 18, Ex. L – Kee MVARs Pt. 2; Kee MVARs Part 2 2:05-28:48	<u>Objection.</u> Vague and ambiguous as phrased. Vague as to time. <u>Undisputed</u> to the extent that over the course of approximately 30 minutes, Vaccari would deploy a round of pepper balls, give Puga time to comply, then deploy another round of pepper balls.
71. During this entire time, Vaccari gave commands to Puga to exit the car or more rounds would be fired. Clarke Decl. ¶ 18, Ex. L – Kee MVARs Pt. 2 2:05-28:48	<u>Undisputed.</u>
72. While the pepper balls were being deployed, Adams was behind Puga's vehicle, next to a CHP vehicle that was facing northbound behind Puga's vehicle	<u>Undisputed.</u>

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Clarke Decl. ¶ 9, Ex. T – Adams Depo. 16:8-13	
73. Adams was behind an open passenger side door of the CHP vehicle for cover. Clarke Decl. ¶ 9, Ex. T – Adams Depo. 16:14-16	Objection. Vague as to which CHP vehicle, which open door, and time. <u>Undisputed</u> that Adams was behind the open passenger door of one of the CHP vehicles at the time of the pepper ball deployments.
74. Puga made a statement indicating he was hurt by one of the pepper balls, or it was causing him pain. Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 15:3-6; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 32:14-18; Clarke Decl. ¶ 11, Ex. V – Kee Depo. 23:2-10	<u>Undisputed.</u>
75. Puga's statement he was hurt by a pepper ball caused Vaccari to stop deploying pepper balls. Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 32:19-24	Objection. The cited evidence does not support the allegation that Puga's statement that he was hurt by a pepper by <i>caused</i> Vaccari to stop deploying pepper balls. <u>Undisputed</u> to the extent that after Puga said that he had been shot in the eye, Vaccari did not deploy any additional pepper balls. Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 32:19-24
76. Puga eventually exited the vehicle. Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 36:15-17; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 33:10-12	<u>Undisputed.</u>
77. Puga exited the vehicle through his vehicle's driver's side door.	<u>Undisputed.</u>

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3	Supporting Evidence	
4	Clarke Decl. ¶ 12, Ex. W – Rubalcava	
5	Depo. 37:16-18	
6	78. Puga did not have a shirt on.	<u>Undisputed.</u>
7	Clarke Decl. ¶ 11, Ex. V – Kee Depo.	
8	10:24-11:1; Clarke Decl. ¶ 12, Ex. W –	
9	Rubalcava Depo. 51:20-21; Clarke	
10	Decl. ¶ 13, Ex. X – Blackwood Depo.	
11	16:3-4	
12	79. Puga had baggy jeans.	<u>Objection.</u> Vague and ambiguous as
13	Clarke Decl. ¶ 11, Ex. V – Kee Depo.	phrased as to whether Puga was
14	11:4-11	wearing baggy jeans or was simply in
15		possession of baggy jeans.
16		<u>Undisputed</u> to the extent that Puga had
17		on baggy jeans.
18	80. Puga was next to his driver's side	<u>Objection.</u> Vague as to "next to
19	door for approximately two minutes	driver's side."
20	before moving to the front of his	
21	vehicle.	<u>Undisputed</u> to the extent that after Puga
22	Clarke Decl. ¶ 18, Ex. L – Kee	fully exited the vehicle, he stood next
23	MVARs Pt. 2 at 40:41-42:08; Adams	to the driver's side of the door for
24	Decl. ¶ 9, Ex. L – Kee MVARs Pt. 2 at	approximately two minutes before
25	40:41-42:08	moving to the front of the vehicle.
26	81. Throughout this time period while	<u>Objection.</u> Vague and ambiguous as to
27	Puga was at the driver's side, Puga put	"put his hands down."
28	his hands up several times but then	
	would put his hands down.	<u>Disputed</u> to the extent that this alleges
	Clarke ¶ 13, Ex. X – Blackwood 15:10-	Puga's hands were mostly down and
	12; Clarke ¶ 10, Ex. U – Vaccari Depo.	that he would occasionally put his
	34:7-9; Clarke Decl. ¶ 9, Ex. T –	hands up.
	Adams Depo. 21:2-16	While Puga was exiting the vehicle
		and while Puga stood next to the
		driver's side of the vehicle, Puga
		attempted to comply with commands to

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	<p>raise his hands, but would occasionally bring his hands to his face in what appears to be an attempt to wipe the pepper balls' effects from his face and would also occasionally grip the driver's door of the vehicle with his hand(s).</p> <p><i>See</i> Ex. 11 to Le Decl., Blackwood MVARs Part 4 at 32:23-37:50.</p>
<p>82. While Puga was at the driver's side, Puga was given commands to keep his hands up.</p> <p>Clarke Decl. ¶ 17, Ex. K – Blackwood MVARs Fragment 04 at 36:56</p>	<p><u>Objection.</u> Vague as to time.</p> <p><u>Disputed</u> to the extent that this alleges Puga was continually given commands to keep his hands up while he was exiting the vehicle and while he stood at the driver's side of the vehicle.</p> <p>Over the course of approximately six minutes, Kee only gave Puga commands to keep his hands up twice while Puga was exiting the vehicle and while he stood at the driver's side of the vehicle.</p> <p>Ex. 11 to Le Decl., Blackwood MVARs Part 4 at 33:55, 36:56; <i>see</i> Ex. 11 to Le Decl., Blackwood MVARs Part 4 at 32:22-37:50.</p>
<p>83. When Puga was at the driver's side, Puga was given commands to walk back towards the officers.</p> <p>Clarke Decl. ¶ 17, Ex. K – Blackwood MVARs at 36:54, 37:31; Clarke Decl. ¶ 18, Ex. L – Kee MVARs Pt 2 41:14-41:52</p>	<p><u>Undisputed.</u></p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>84. Puga would not keep his hands up for an extended period of time.</p> <p>Clarke Decl. ¶ 13, Ex. X –Blackwood Depo. 15:10-12; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 34:7-9; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 21:2-16</p>	<p><u>Objection.</u> Vague and ambiguous as to “extended period of time.”</p> <p><u>Disputed</u> to the extent that this alleges Puga’s hands were mostly down and that he would occasionally put his hands up and that he was not complying with repeated commands to keep his hands up.</p> <p>While Puga was exiting the vehicle and while Puga stood next to the driver’s side of the vehicle, Puga raised his hands, but would occasionally bring his hands to his face in what appears to be an attempt to wipe the pepper balls’ effects from his face and would also occasionally grip the driver’s door of the vehicle with his hand(s). Over the course of approximately six minutes, Kee only gave Puga commands to keep his hands up twice while Puga was exiting the vehicle and while he stood at the driver’s side of the vehicle.</p> <p>See Ex. 11 to Le Decl., Blackwood MVARs Part 4 at 32:22-37:50.</p>
<p>85. Rubalcava was behind his driver’s side door under cover when Puga exited the vehicle.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 37:21-22</p>	<p><u>Undisputed.</u></p>
<p>86. Adams was close to a CHP vehicle with cover when Puga exited the vehicle.</p>	<p><u>Undisputed.</u></p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
Clarke Decl. ¶ 9, Ex. T – Adams Depo. 20:6-14	
87. Vaccari was behind the trunk of the CHP vehicle behind Puga's car.	Objection. Vague as to time. Vague is to which CHP vehicle.
Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 33:16-34:1	<u>Undisputed</u> to the extent that Vaccari was behind the trunk of the CHP vehicle, behind Puga's car,
88. Puga was given multiple commands while he was next to his driver's side that he ignored.	Objection. Vague and ambiguous as phrased.
Clarke Decl. ¶ 9, Ex. T – Adams Depo. 21:10-12, 32:18-25	Disputed to the extent this alleges Puga ignored all commands given to him while he was next to the driver's side door.
	Kee gave him the command to "keep your hands up" and to "close the door" to which Puga complied. Ex. 11 to Le Decl., Blackwood MVARs Part 4 at 36:56, 37:11-14.
89. The multiple commands included getting on the ground and keeping his hands raised.	Objection. Vague and ambiguous as to time.
Clarke Decl. ¶ 9, Ex. T – Adams Depo. 21:10-12, 32:18-25	Disputed that Puga was given commands to get on the ground while he was exiting the vehicle and when he was standing next to the driver's side of the vehicle.
	Kee did not give Puga commands to get on the ground while Puga was exiting the vehicle or while Puga was standing next to the driver's side of the vehicle. Kee gave Puga commands to

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>come out, to walk back, to walk backwards, and to keep his hands up.</p> <p><i>See</i> Ex. 11 to Le Decl., Blackwood MVARs Part 4 at 32:22-37:50.</p>
<p>90. Rubalcava did not see Puga had a firearm while he was on the driver's side of his vehicle.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 38:5-16, 77:8-10</p>	<p>Objection. Vague as to “had a firearm.”</p> <p><u>Undisputed</u> to the extent that Rubalcava did not see a gun in Puga's hand or on his person while Puga was at the driver's side of the Expedition.</p>
<p>91. Kee did not see Puga had a firearm while he was on the driver's side of his vehicle.</p> <p>Clarke Decl. ¶ 11, Ex. V – Kee Depo. 24:4-17</p>	<p>Objection. Vague as to “had a firearm.”</p> <p><u>Undisputed</u> to the extent that Kee did not see a gun in Puga's hand or on his person while Puga was at the driver's side of the Expedition.</p>
<p>92. Blackwood did not see Puga had a firearm while he was on the driver's side of his vehicle.</p> <p>Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 33:25-34:6</p>	<p>Objection. Vague as to “had a firearm.”</p> <p><u>Undisputed</u> to the extent that Blackwood did not see a gun in Puga's hand or on his person while Puga was at the driver's side of the Expedition.</p>
<p>93. Adams did not see Puga had a firearm while he was on the driver's side of his vehicle.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo 21:22-24</p>	<p>Objection. Vague as to “had a firearm.”</p> <p><u>Undisputed</u> to the extent that Blackwood did not see a gun in Puga's hand or on his person while Puga was at the driver's side of the Expedition.</p>
<p>94. Vaccari did not know whether Puga had a firearm on him when he exited the driver's side.</p>	<p><u>Undisputed</u> to the extent that Vaccari was treating Puga as if he had a firearm until he had information otherwise.</p>

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3	Clarke Decl. ¶ 10, Ex. U – Vaccari	
4	Depo. 33:13-34:6	
5	95. After a few minutes of being on the	Objection. The cited evidence does not
6	driver's side of his vehicle, Puga ran to	support the allegation that Puga <i>ran</i> to
7	the front of his vehicle in front of his	the front of his vehicle.
8	Clarke Decl. ¶ 12, Ex. W – Rubalcava	Disputed that Puga ran to the front of
9	Depo. 39:18-23; Clarke Decl. ¶ 9, Ex.	the Expedition. Puga walked to the
10	T – Adams Depo. 22:13-15; Clarke	front of the white Expedition.
11	Decl. ¶ 13, Ex. X – Blackwood	Ex. 8 to Le Decl., Gonzalez Dep.
12	Depo. 15:13-15; Clarke Decl. ¶ 10, Ex.	42:21-25; Ex. 11 to Le Decl.,
13	U – Vaccari Depo. 35:8-10	Blackwood MVARs Part 4 at 37:48-
14		37:50.
15	96. Puga faced south towards his own	Objection. Vague as to time.
16	vehicle.	
17	Clarke Decl. ¶ 12, Ex. W – Rubalcava	<u>Undisputed.</u>
18	Depo. 43:21-24; Clarke Decl. ¶ 9, Ex.	
19	T – Adams Depo. 40:16-22; Clarke	
20	Decl. ¶ 13, Ex. X – Blackwood Depo.	
21	13:7-10	
22	97. Puga was near the middle of the	Objection. Vague as to time.
23	hood but slightly closer to the driver's	
24	side.	Disputed. Puga appears to be
25	Clarke Decl. ¶ 12, Ex. W – Rubalcava	positioned in the middle of the hood
26	Depo. 43:21-24; Clarke Decl. ¶ 9, Ex.	while he was at the front of the
27	T – Adams Depo. 40:16-22; Clarke	Expedition.
28	Decl. ¶ 13, Ex. X – Blackwood Depo.	Ex. 10 to Le Decl., Erin Mangerino
	13:7-10	Cellphone Video at 00:00-00:52.
	98. The front of Puga's vehicle was	Objection. Vague as to time.
	blocking the view of Puga's midsection	
	down to his feet.	
	Clarke Decl. ¶ 9, Ex. T – Adams Depo.	
	41:2-9; Clarke Decl. ¶ 10, Ex. U –	
	Vaccari Depo. 63:23-64:3	

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>99. Kee gave Puga commands to keep his hands where they could see them.</p> <p>Clarke Decl. ¶ 11, Ex. V – Kee Depo. 59:23-60:3</p>	
<p>100. The officers were unable to get Puga to comply and surrender.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 53:12-17</p>	<p><u>Objection.</u> Vague as phrased.</p>
<p>101. The officers and deputies were unable to see Puga's waistband where Puga was positioned.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 53:12-17</p>	<p><u>Objection.</u> Vague as to time.</p>
<p>102. Puga had been at the front of his vehicle for several minutes before law enforcement approached.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 42:18-21; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 46:2-6</p>	<p><u>Objection.</u> Vague as to "several minutes."</p> <p><u>Undisputed</u> to the extent that Puga was at the front of the vehicle for less than five minutes before law enforcement started to approach.</p> <p>Ex. 12 to Le Decl., Kee MVARs Part 2 at 42:09-46:43.</p>
<p>103. A helicopter was initially present and using its spotlights throughout the pursuit</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 37:6-7; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 12:3-13</p>	<p><u>Objection.</u> Vague as to "initially present."</p> <p><u>Undisputed</u> that a helicopter was present during the pursuit.</p>
<p>104. By the time the officers approached and the shooting began, the helicopter was not present.</p>	<p><u>Undisputed.</u></p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
Clarke Decl. ¶ 11, Ex. V – Kee Depo. 46:20-23; Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 87:19-23	
<p>105. It was dark where Puga was standing.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 11:20-21; Clarke Decl. ¶ 11, Ex. V – Kee Depo. 46:20-23</p>	<p><u>Objection.</u> Vague as to “dark.”</p> <p><u>Objection.</u> The cited evidence does not support the alleged fact that it was dark where Puga was standing.</p> <p><u>Disputed.</u></p> <p>There was a streetlight on the corner of Peach and Catalpa as well as the patrol vehicle's spotlights and red and blue lights illuminating the area.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 37:8-15; Ex. 7 to Le Decl., Mangerino Dep. 40:17-41:6; Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 00:00-00:52.</p> <p>There was enough light for Rubalcava to see Puga while Puga was running away.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 92:10-12.</p>
<p>106. Kee and Rubalcava were to the left of the patrol vehicle to the southwest dirt area.</p> <p>Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 18:11-21</p>	<p><u>Objection.</u> Vague as to which patrol vehicle. Vague as to time.</p> <p><u>Undisputed</u> to the extent that Kee and Rubalcava were to the left of Rubalcava and Blackwood's patrol vehicle, in the southwest dirt area when Puga was at the front of the vehicle.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>107. Kee and Rubalcava were approaching to the left-front corner of Puga's vehicle on the west side.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 41:5-7; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 37:5-11</p>	<p><u>Disputed</u> that Kee and Rubalcava ever reached near the left-front corner of Puga's vehicle on the west side.</p> <p>There was an electrical pole on the southwest corner of the intersection that was almost parallel to the front of the Expedition.</p> <p>Ex. 1 to Le Decl., Kee Dep. 26:22-27:9; Ex. 15 to Le Decl., Photograph of Scene.</p> <p>In the Erin Mangerino cellphone video of the incident, moments before the shooting, two figures can be seen standing without cover in the street, partially obscured by the utility pole before backing away in a southern direction, away from the utility pole, and out of frame.</p> <p>Ex. 10 to Le Decl., E. Mangerino Cellphone Video at 0:00:29-00:53.</p> <p>Erin Mangerino was unable to see any officers standing on her side of Peach Street.</p> <p>Ex. 7 to Le Decl., Mangerino Dep. 53:11-22.</p>
<p>108. While they were approaching, Kee told Puga to put his hands up to where they can see them.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 42:2-6</p>	<p><u>Undisputed.</u></p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>109. Commands were consistently given for Puga to keep his hands up.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 32:5-10</p>	<p><u>Objection.</u> Vague as to time.</p> <p><u>Undisputed</u> to the extent that commands were given for Puga to keep his hands up which he was at the front of the vehicle.</p>
<p>110. Adams and Vaccari approached by crossing between Puga's and CHP's vehicles.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 29:7-14</p>	<p><u>Objection.</u> Vague as to "crossing between Puga's and CHP's vehicles."</p> <p><u>Undisputed</u> to the extent that Adams and Vaccari approached the front of the Expedition by moving east and crossing in front of the CHP vehicles and behind the Expedition before moving north towards the front of the Expedition.</p> <p>Ex. 12 to Le Decl., Kee MVARs Part 2 at 46:42-46:49.</p>
<p>111. Adams and Vaccari moved eastward to gain a better view of Puga.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 29:7-14</p>	<p><u>Disputed.</u></p> <p>Vaccari wanted to move up the passenger side of the vehicle to cut off an avenue of escape for Puga.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 39:6-20.</p> <p>Prior to approaching, Vaccari and Adams had discussed the possibility of using the Taser on Puga because Puga was a good candidate for the Taser due to him being shirtless, but Vaccari ultimately decided to utilize the 40-mm less-lethal instead.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 40:3-16.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>112. Adams and Vaccari approached on the passenger side of Puga's vehicle.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 26:17-20; Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 18:11-21; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 46:2-6</p>	<p><u>Undisputed.</u></p>
<p>113. Adams was in front of Vaccari.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 27:8-14</p>	<p><u>Objection.</u> Vague as to time.</p> <p><u>Disputed</u> that Adams was in front of Vaccari during their entire approach. When Adams and Vaccari started moving east for their approach, Adams was in front of Vaccari. However, by the time Adams and Vaccari got to the side of the road and started moving north, they were side by side with each other.</p> <p>Ex. 12 to Le Decl., Kee MVARs Part 2 at 46:42-46:48.</p>
<p>114. Adams had his Glock 17, 9mm drawn.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 31:24-32:4</p>	<p><u>Undisputed.</u></p>
<p>115. The CHP officers were approaching Puga at a similar pace, just on the other side of Puga's vehicle.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 27:15-21</p>	<p><u>Disputed.</u></p> <p>The CHP Officers were already in the dirt shoulder prior Adams and Vaccari's approach.</p> <p>See Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 00:06-00:38.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>The CHP Officers moved back prior to Adams and Vaccari's approach.</p> <p><i>See</i> Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 00:38-00:52.</p>
<p>116. There was no discussion between CHP and the Sheriff's Department about how to approach Puga when he was in front of his vehicle.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 28:3-19; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 36:16-25</p>	<p><u>Undisputed.</u></p>
<p>117. CHP discussed amongst themselves that Rubalcava and Kee would approach Puga and handcuff him.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 30:13-18</p>	<p><u>Disputed</u> to the extent that this suggest Rubalcava and Kee also discussed their intent to approach Puga with Blackwood.</p> <p>There was no discussion between Blackwood and the other CHP officers about what they were going to do after Puga got out of the car.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 31:19-23.</p>
<p>118. Adams and Vaccari formulated a plan to move to the east side of Puga's vehicle when they could no longer see Puga's hands when he was at the front of his vehicle.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 25:12-22; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 39:6-20</p>	<p><u>Undisputed.</u></p>
<p>119. The extent of Adams' and Vaccari's plan was to merely gain a better view of Puga.</p>	<p><u>Disputed.</u></p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 25:12-22; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 39:6-20</p>	<p>Vaccari wanted to move up the passenger side of the vehicle to cut off an avenue of escape for Puga.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 39:6-20.</p> <p>Prior to approaching, Vaccari and Adams had discussed the possibility of using the Taser on Puga because Puga was a good candidate for the Taser due to him being shirtless, but Vaccari ultimately decided to utilize the 40-mm less-lethal instead.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 40:3-16.</p>
<p>120. Adams and Vaccari used Puga's vehicle passenger side as cover.</p> <p>Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 40:21-25</p>	<p><u>Disputed.</u></p> <p>As Vaccari approached from the dirt shoulder, he did not have any cover.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 41:14-24.</p>
<p>121. Adams and Vaccari determined that upon approach, Vaccari would arm himself with the less lethal launcher.</p> <p>Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 40:1-16; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 25:23-26:4</p>	<p><u>Disputed</u> to the extent that Adams and Vaccari decided that Vaccari would arm himself with a less-lethal launcher only at the time of the approach.</p> <p>Prior to approaching, Vaccari and Adams had discussed the possibility of using the Taser on Puga because Puga was a good candidate for the Taser due to him being shirtless, but Vaccari ultimately decided to utilize the 40-mm less-lethal instead.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	Ex. 5 to Le Decl., Vaccari Dep. 40:3-16.
122. Vaccari was armed with the less lethal launcher to have a less lethal option available. Clarke Decl. ¶ 10, Ex. U – Vaccari 40:1-16; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 25:23-26:4	<u>Undisputed.</u>
123. Adams and Vaccari determined that upon approach, Adams would be armed with his firearm. Clarke Decl. ¶ 9, Ex. T – Adams Depo. 31:18-32:2	<u>Objection.</u> The cited evidence does not support the alleged fact that Adams and Vaccari determined that upon approach, Adams would be armed with his firearm. <u>Undisputed</u> to the extent that when Adams was approaching, he had his firearm in his hands.
124. Adams was armed with the firearm in the event deadly force was needed. Clarke Decl. ¶ 9, Ex. T – Adams Depo. 31:24-32:4	<u>Objection.</u> The cited evidence does not support the alleged fact that Adams was armed with the firearm in the event deadly force was needed. The cited evidence simply states that Adams had a firearm in his hand when he was approaching the passenger side of the vehicle.
125. As Adams and Vaccari approached on the passenger side, Puga's hands were overhead. Jason Decl. ¶¶ 14-15, Ex. D and E; Adams Decl. ¶ 6, Ex. J – Mangerino Video	<u>Undisputed.</u>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>126. Vaccari remained with his 40mm less-lethal shotgun targeting Puga.</p> <p>Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 50:25-51:10</p>	<p><u>Objection.</u> Vague and ambiguous as to “remained with his 40mm less-lethal targeting Puga.” Vague as to time.</p> <p><u>Undisputed</u> to the extent that Vaccari at the time of the shooting and as Puga ran away, Vaccari initially kept his 40mm less-lethal shotgun.</p>
<p>127. As Adams and Vaccari approached, Adams saw Puga's arms lower from overhead to his waistband.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 44:6-8; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 64:4-7; Clarke Decl. ¶ 9, Ex. T – Adams 36:2-11; Jason Decl. ¶ 14 – Ex. D, ¶ 16 – Ex. F, ¶ 19 – Ex. I</p>	<p><u>Disputed.</u></p> <p>Only Puga's right hand dropped before the shooting started and then his left hand dropped as he</p>
<p>128. As the officers were approaching, Puga lowered his hands.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 44:6-8; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 64:4-7; Jason Decl. ¶ 14 – Ex. D, ¶ 16 – Ex. F, ¶ 19 – Ex. I</p>	<p><u>Disputed</u> to the extent that this suggests both hands lowered at the same time, or that Puga lowered his hands towards his waistband.</p> <p>Puga occasionally would drop his hands to pull up his pants while he was standing near the front of the vehicle.</p> <p>Ex. 4 to Le Decl., Adams Dep. 61:3-62:3; Ex. 8 to Le Decl., Gonzalez Dep. 42:18-25.</p> <p>The bystander cell phone video taken by Erin Mangerino shows Puga with his hands up and briefly dropping his right hand to his waistband to adjust his pants before raising his hand up again, twice, before the shooting.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 10 to Le Decl., E. Mangerino Cellphone Video at 0:00:03-00:07; 0:00:20-00:27.</p> <p>When Kee saw Puga's right hand lower, Puga's left hand was still up.</p> <p>Ex. 1 to Le Decl., Kee Dep. 59:9-11.</p>
<p>129. Adams and Vaccari were on the passenger side of Puga's vehicle on the dirt shoulder when they first heard shots.</p> <p>Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 41:1-13</p>	<p><u>Undisputed.</u></p>
<p>130. Adams saw Puga's hands dive into his waistband area and withdraw a gun.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 36:2-11; Jason Decl. ¶ 16 – Ex. F, ¶ 17 – Ex. G, ¶ 19 – Ex. I</p>	<p><u>Disputed.</u></p> <p>As soon as Puga turned to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never had a gun in his hand.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>None of the videos capturing the incident show Puga with a gun in his hand.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:16-18; Ex. 5 to Le Decl., Vaccari Dep. 9:15-18.</p> <p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p> <p>When Adams approached the vehicle, Puga was standing in the front close to the driver's side headlight and Adams could only see Puga from chest up.</p> <p>Ex. 4 to Le Decl., Adams Dep. 40:16-22, 41:2-12, 45:11-16.</p> <p>As Adams was approaching from the passenger's side of the expedition, he heard shots.</p> <p>Ex. 4 to Le Decl., Adams Dep. 35:12-14.</p> <p>Adams and Vaccari had only reached the part where the painted curb meets the unpainted curb when the shots started, which is near the rear door of the Expedition.</p> <p>Ex. 4 to Le Decl., Adams Dep. 76:1-19; Ex. 12 to Le Decl., Kee MVARs</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Part 2 at 46:46-46:49; Ex. 16 to Le Decl., Photograph of Expedition at Curb.</p> <p>The passenger door of the Expedition was still open when Adams and Vaccari approached from the passenger side.</p> <p>Ex. 4 to Le Decl., Adams Dep. 73:2-6; Ex. 12 to Le Decl., Kee MVARs Part 2 at 46:42-46:49.</p> <p>After hearing the gunshots, Adams ducked and then stepped over a high curb before firing.</p> <p>Ex. 4 to Le Decl., Adams Dep. 38:1-4.</p>
<p>131. Adams heard shots from what he believed was the firearm Puga had drawn.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 46:23-47:4; 49:2-10</p>	<p><u>Disputed.</u></p> <p>As soon as Puga turned to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never had a gun in his hand.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>None of the videos capturing the incident show Puga with a gun in his hand.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:16-18; Ex. 5 to Le Decl., Vaccari Dep. 9:15-18.</p> <p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p> <p>When Adams approached the vehicle, Puga was standing in the front close to the driver's side headlight and Adams could only see Puga from chest up.</p> <p>Ex. 4 to Le Decl., Adams Dep. 40:16-22, 41:2-12, 45:11-16.</p> <p>As Adams was approaching from the passenger's side of the expedition, he heard shots.</p> <p>Ex. 4 to Le Decl., Adams Dep. 35:12-14.</p> <p>Adams and Vaccari had only reached the part where the painted curb meets the unpainted curb when the shots started, which is near the rear door of the Expedition.</p> <p>Ex. 4 to Le Decl., Adams Dep. 76:1-19; Ex. 12 to Le Decl., Kee MVARs</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Part 2 at 46:46-46:49; Ex. 16 to Le Decl., Photograph of Expedition at Curb.</p> <p>The passenger door of the Expedition was still open when Adams and Vaccari approached from the passenger side.</p> <p>Ex. 4 to Le Decl., Adams Dep. 73:2-6; Ex. 12 to Le Decl., Kee MVARs Part 2 at 46:42-46:49.</p> <p>After hearing the gunshots, Adams ducked and then stepped over a high curb before firing.</p> <p>Ex. 4 to Le Decl., Adams Dep. 38:1-4.</p>
<p>132. Adams believed the shots he heard were from Puga firing at him from the gun that he had drawn.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 46:23-47:4; 47:10-14; 49:2-10</p>	<p><u>Disputed.</u></p> <p>As soon as Puga turned to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never had a gun in his hand.</p>

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		Ex. 8 to Le Decl., Gonzalez Dep.
4		97:16-25, 83:21-24; Ex. 14 to Le Decl.,
5		Botten Dep. 129:13-25, 130:6-12.
6		None of the videos capturing the
7		incident show Puga with a gun in his
8		hand.
9		Ex. 1 to Le Decl., Kee Dep. 7:16-18;
10		Ex. 5 to Le Decl., Vaccari Dep. 9:15-
11		18.
12		Gonzalez saw Puga's waistband when
13		he turned to take off running and never
14		saw a gun in his waistband.
15		Ex. 8 to Le Decl., Gonzalez Dep.
16		95:15-25, 115:18-21.
17		When Adams approached the vehicle,
18		Puga was standing in the front close to
19		the driver's side headlight and Adams
20		could only see Puga from chest up.
21		Ex. 4 to Le Decl., Adams Dep. 40:16-
22		22, 41:2-12, 45:11-16.
23		As Adams was approaching from the
24		passenger's side of the expedition, he
25		heard shots.
26		Ex. 4 to Le Decl., Adams Dep. 35:12-
27		14.
28		Adams and Vaccari had only reached
		the part where the painted curb meets
		the unpainted curb when the shots
		started, which is near the rear door of
		the Expedition.
		Ex. 4 to Le Decl., Adams Dep. 76:1-
		19; Ex. 12 to Le Decl., Kee MVARs

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Part 2 at 46:46-46:49; Ex. 16 to Le Decl., Photograph of Expedition at Curb.</p> <p>The passenger door of the Expedition was still open when Adams and Vaccari approached from the passenger side.</p> <p>Ex. 4 to Le Decl., Adams Dep. 73:2-6; Ex. 12 to Le Decl., Kee MVARs Part 2 at 46:42-46:49.</p> <p>After hearing the gunshots, Adams ducked and then stepped over a high curb before firing.</p> <p>Ex. 4 to Le Decl., Adams Dep. 38:1-4.</p>
<p>133. Adams fired upon Puga.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 36:2-11</p>	<p><u>Objection.</u> Vague as to time.</p> <p><u>Undisputed</u> to the extent that after hearing the gunshots, Adams ducked and then stepped over a high curb before firing at Puga while Puga was running away.</p> <p>Ex. 4 to Le Decl., Adams Dep. 38:1-4.</p>
<p>134. Vaccari was slightly behind Adams.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 27:4-11</p>	<p><u>Objection.</u> Vague as to time.</p> <p><u>Disputed</u> that Vaccari was slightly behind Adams when the shooting started. Vaccari was standing side-by-side with Adams.</p> <p>Ex. 12 to Le Decl., Kee MVARs Part 2 at 46:47-46:51.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>135. Vaccari had the same view of Puga as Adams.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 27:12-14; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 41:1-8</p>	<p><u>Disputed.</u> Vaccari was standing to the right of Adams immediately prior to and when the shooting started.</p> <p>Ex. 12 to Le Decl., Kee MVARs Part 2 at 46:47-46:51.</p>
<p>136. Vaccari observed Puga pull a firearm.</p> <p>Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 64:4-12</p>	<p><u>Objection.</u> Vague as to time.</p> <p><u>Disputed.</u></p> <p>As soon as Puga turned to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never had a gun in his hand.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>None of the videos capturing the incident show Puga with a gun in his hand.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:16-18; Ex. 5 to Le Decl., Vaccari Dep. 9:15-18.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p> <p>When Adams approached the vehicle, Puga was standing in the front close to the driver's side headlight and Adams could only see Puga from chest up.</p> <p>Ex. 4 to Le Decl., Adams Dep. 40:16-22, 41:2-12, 45:11-16.</p> <p>As Adams was approaching from the passenger's side of the expedition, he heard shots.</p> <p>Ex. 4 to Le Decl., Adams Dep. 35:12-14.</p> <p>Adams and Vaccari had only reached the part where the painted curb meets the unpainted curb when the shots started, which is near the rear door of the Expedition.</p> <p>Ex. 4 to Le Decl., Adams Dep. 76:1-19; Ex. 12 to Le Decl., Kee MVARs Part 2 at 46:46-46:49; Ex. 16 to Le Decl., Photograph of Expedition at Curb.</p> <p>The passenger door of the Expedition was still open when Adams and Vaccari approached from the passenger side.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	Ex. 4 to Le Decl., Adams Dep. 73:2-6; Ex. 12 to Le Decl., Kee MVARs Part 2 at 46:42-46:49.
137. Vaccari heard gunshots. Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 40:21-41:5	<u>Objection.</u> Vague as to time.
138. Vaccari did not fire his firearm. Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 42:17-21, 50:22-51:10	<u>Objection.</u> Vague as to time.
139. Vaccari was unsure if the less lethal made contact with Puga. Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 52:1-6	<u>Objection.</u> Assumes facts not in evidence.
140. Within seconds of the first shot being fired, Puga turned to run in a northwest direction. Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 21:16-20; Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 48:13-18, 51:3-6; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 42:7-9; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 50:11-14	<u>Disputed.</u> As soon as Puga turned to run, officers shot at Puga. Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.
141. Puga had a gun when he was running. Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 83:10-19; Clarke Decl. ¶ 11, Ex. V – Kee Depo. 65:25-66:4; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 38:8-	<u>Disputed.</u>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
11; Jason Decl. ¶ 17 – Ex. G, ¶ 18 – Ex. H	
142. Puga did not drop his while he ran. Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 83:10-19, 85:13-16; Clarke Decl. ¶ 11, Ex. V – Kee Depo. 65:25-67:4; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 38:8-11; Jason Decl. ¶ 17 – Ex. G, ¶ 18 – Ex. H	<u>Objection.</u> Vague and ambiguous as to “drop his while he ran.” <u>Disputed</u> to the extent this alleges Puga was holding a gun while he ran.
143. Puga did not make any gestures that he was surrendering. Clarke Decl. ¶ 12, Ex. W – Rubalcava 85:17-19	<u>Objection.</u> Vague as to time. <u>Undisputed</u> to the extent that that Puga did not make any gestures that he was surrendering while he was running.
144. While Puga was running, he turned back towards the officers with his firearm in his hand. Clarke Decl. ¶ 9, Ex. T – Adams Depo. 38:8-11	<u>Disputed</u> that Puga had a firearm in his hands while he was running. As soon as Puga turned to run, officers shot at Puga. Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31. Puga never grabbed or aggressively reached for anything prior to the shots. Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12. Puga never had a gun in his hand.

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never pointed his hand or a weapon in any specific direction or at any officer.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 64:8-17; Ex. 8 to Le Decl., Gonzalez Dep. 97:1-6.</p> <p>Puga never fired a weapon at any officer.</p> <p>Ex. 7 to Le Decl., Mangerino Dep. 37:14-16; Ex. 8 to Le Decl., Gonzalez Dep. 132:22-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Neither smoke nor any muzzle flash ever came from Puga.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 20:10-12; Ex. 4 to Le Decl., Adams Dep. 36:12-18; Ex. 5 to Le Decl., Vaccari Dep. 48:14-20; Ex. 8 to Le Decl., Gonzalez Dep. 99:8-25.</p> <p>None of the videos capturing the incident show Puga with a gun in his hand.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:16-18; Ex. 5 to Le Decl., Vaccari Dep. 9:15-18.</p> <p>None of the videos capturing the incident show Puga ever pointing a gun at anyone.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:22-24; Ex. 5 to Le Decl., Vaccari Dep. 9:19-21.</p> <p>None of the videos capturing the incident show Puga ever firing a gun.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:19-21.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>None of the videos capturing the incident show any muzzle flash coming from the area Puga was at.</p> <p>Ex. 1 to Le Decl., Kee Dep. 92:14-16; Ex. 2 to Le Decl., Rubalcava Dep. 93:17-19.</p> <p>There were no bullet impacts or casings found near the area of the initial shooting that would support the allegation that Mr. Puga fired a weapon at anyone.</p> <p>Clark Decl. ¶ 16a.</p> <p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p> <p>As Puga was running, he never turned around to look at the officers.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 100:13-17.</p> <p>While Puga was running, his hands were moving in a running motion.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 116:16-21.</p> <p>None of the videos that captured the shooting ever show Puga turn back towards the officers or point his hand back towards the officers.</p> <p>Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 0:00:50-01:44; Ex. 11 to Le Decl., Rubalcava Dashcam Video at 0:42:23-42:47; Kee Dashcam Video at 46:47-47:07.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>When asked during his interview with detectives after the incident as to what caused Rubalcava to fire his second volley, Rubalcava answered that Puga was still fleeing but that Puga was not doing anything with any alleged weapon. Ex. 2 to Le Decl., Rubalcava Dep. 55:8-22.</p> <p>Blackwood was trying to assess while he was firing by looking for a gun but could not see Puga's hands and therefore never saw Puga with a gun while Puga was running away.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 24:10-13, 30:23-31:11, 45:23-46:2.</p> <p>During the time Blackwood was shooting at Puga, Blackwood could not see Puga's hands.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 36:18-20.</p>
<p>145. Puga fell down in the dirt shoulder, chest-down.</p> <p>Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 38:11-24; Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 57:6-8; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 43:11-13, 54:1-2</p>	<p><u>Undisputed.</u></p>
<p>146. Once Puga was no longer a threat, Adams ceased firing his weapon.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 51:25-52:4</p>	<p><u>Disputed.</u></p> <p>As soon as Puga turned to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Decl., Gonzalez Cellphone Video at 0:06:24-06:31.</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never had a gun in his hand.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never pointed his hand or a weapon in any specific direction or at any officer.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 64:8-17; Ex. 8 to Le Decl., Gonzalez Dep. 97:1-6.</p> <p>Puga never fired a weapon at any officer.</p> <p>Ex. 7 to Le Decl., Mangerino Dep. 37:14-16; Ex. 8 to Le Decl., Gonzalez Dep. 132:22-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Neither smoke nor any muzzle flash ever came from Puga.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 20:10-12; Ex. 4 to Le Decl., Adams Dep. 36:12-18; Ex. 5 to Le Decl., Vaccari Dep. 48:14-20; Ex. 8 to Le Decl., Gonzalez Dep. 99:8-25.</p> <p>None of the videos capturing the incident show Puga with a gun in his hand.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:16-18; Ex. 5 to Le Decl., Vaccari Dep. 9:15-18.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>None of the videos capturing the incident show Puga ever pointing a gun at anyone.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:22-24; Ex. 5 to Le Decl., Vaccari Dep. 9:19-21.</p> <p>None of the videos capturing the incident show Puga ever firing a gun.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:19-21.</p> <p>None of the videos capturing the incident show any muzzle flash coming from the area Puga was at.</p> <p>Ex. 1 to Le Decl., Kee Dep. 92:14-16; Ex. 2 to Le Decl., Rubalcava Dep. 93:17-19.</p> <p>There were no bullet impacts or casings found near the area of the initial shooting that would support the allegation that Mr. Puga fired a weapon at anyone.</p> <p>Clark Decl. ¶ 16a.</p> <p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p> <p>Rubalcava concedes it would not have been appropriate to shoot at Puga if he merely saw a gun in Puga's waistband.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 97:19-22.</p> <p>Based on Rubalcava's training, if Puga had not pointed a gun at Rubalcava, Rubalcava would not have shot.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 2 to Le Decl., Rubalcava Dep. 103:7-18.</p> <p>As Puga was running, he never turned around to look at the officers.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 100:13-17.</p> <p>While Puga was running, his hands were moving in a running motion.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 116:16-21.</p> <p>None of the videos that captured the shooting ever show Puga turn back towards the officers or point his hand back towards the officers.</p> <p>Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 0:00:50-01:44; Ex. 11 to Le Decl., Rubalcava Dashcam Video at 0:42:23-42:47; Kee Dashcam Video at 46:47-47:07.</p> <p>Adams fired three volleys of shots with two distinct pauses between the volleys.</p> <p>Ex. 4 to Le Decl., Adams Dep. 37:15-18.</p> <p>Adams fired three shots during his first volley, four shots during his second volley, and three shots during his third volley.</p> <p>Ex. 4 to Le Decl., Adams Dep. 37:19-22, 38:5-7, 39:10-12.</p> <p>Adams was aiming at Puga's back and side during all three volleys.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 4 to Le Decl., Adams Dep. 39:13-20.</p> <p>Puga was still running away when Adams fired his second volley.</p> <p>Ex. 4 to Le Decl., Adams Dep. 38:8-9.</p> <p>Adams is not sure whether he fired any shots after Puga went to the ground.</p> <p>Ex. 4 to Le Decl., Adams Dep. 52:7-17.</p> <p>Just prior to Puga going to the ground, he was staggering as if he had been struck by gunfire.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 52:19-53:4.</p> <p>There were gunshots immediately before Puga went to the ground.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 53:5-7.</p> <p>Puga did not pose a threat to anyone after falling to the ground and appeared incapacitated.</p> <p>Ex. 1 to Le Decl., 37:17-38:3; Ex. 4 to Le Decl., Adams Dep. 52:1-6.</p> <p>Several shots were fired at Puga after he fell to the ground.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 1 to Le Decl., Kee Dep. 68:17-24; Ex. 3 to Le Decl., 25:8-12; Ex. 5 to Le Decl., Vaccari Dep. 43:11-24; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:01:04-01:12; Ex. 11 to Le Decl., Blackwood MVARs Part 4 at 0:42:37-42:45.</p> <p>After Puga fell to the ground, several shots are fired and there is a pause before two almost simultaneous volleys of shots from two different firearms are heard.</p> <p>Ex. 10 to Le Decl., Erin Magerino Cellphone Video at 01:02-01:10.</p> <p>Rubalcava, Blackwood, Kee, and Adams violated standard police practices and training when they shot at Puga while he was running away.</p> <p>Clark Decl. ¶ 17.</p> <p>Puga did not present an immediate threat of death or serious bodily injury as he was running and the officers failed to reassess and overreacted when they fired subsequent volleys when Puga was running.</p> <p>Clark Decl. ¶ 17.</p> <p>There was no immediate defense of life situation while Mr. Puga was running away.</p> <p>Clark Decl. ¶ 17a.</p> <p>There is evidence that this was likely a situation of contagious fire.</p> <p>Clark Decl. ¶ 17d.</p> <p>Officer Rubalcava, Officer Blackwood, Sergeant Kee, and Deputy Adams</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>violated standard police practices and training when they shot at Mr. Puga after he had fallen to the ground.</p> <p>Clark Decl. ¶ 18.</p> <p>Mr. Puga was not an immediate threat of death or serious bodily injury after he had fallen to the ground.</p> <p>Clark Decl. ¶ 18a.</p>
<p>147. Because Puga had a gun in his hands and he was running towards a residential area where he could hold people hostage after he was involved in the shooting, he was considered a threat.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 86:23-87:8</p>	<p><u>Disputed.</u></p> <p>As soon as Puga turned to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never had a gun in his hand.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never pointed his hand or a weapon in any specific direction or at any officer.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 64:8-17; Ex. 8 to Le Decl., Gonzalez Dep. 97:1-6.</p>

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		Puga never fired a weapon at any
4		officer.
5		Ex. 7 to Le Decl., Mangerino Dep.
6		37:14-16; Ex. 8 to Le Decl., Gonzalez
7		Dep. 132:22-24; Ex. 14 to Le Decl.,
8		Botten Dep. 129:13-25, 130:6-12.
9		Neither smoke nor any muzzle flash
10		ever came from Puga.
11		Ex. 3 to Le Decl., Blackwood Dep.
12		20:10-12; Ex. 4 to Le Decl., Adams
13		Dep. 36:12-18; Ex. 5 to Le Decl.,
14		Vaccari Dep. 48:14-20; Ex. 8 to Le
15		Decl., Gonzalez Dep. 99:8-25.
16		None of the videos capturing the
17		incident show Puga with a gun in his
18		hand.
19		Ex. 1 to Le Decl., Kee Dep. 7:16-18;
20		Ex. 5 to Le Decl., Vaccari Dep. 9:15-
21		18.
22		None of the videos capturing the
23		incident show Puga ever pointing a gun
24		at anyone.
25		Ex. 1 to Le Decl., Kee Dep. 7:22-24;
26		Ex. 5 to Le Decl., Vaccari Dep. 9:19-
27		21.
28		None of the videos capturing the
		incident show Puga ever firing a gun.
		Ex. 1 to Le Decl., Kee Dep. 7:19-21.
		None of the videos capturing the
		incident show any muzzle flash coming
		from the area Puga was at.
		Ex. 1 to Le Decl., Kee Dep. 92:14-16;
		Ex. 2 to Le Decl., Rubalcava Dep.
		93:17-19.
		There were no bullet impacts or
		casings found near the area of the
		initial shooting that would support the

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>allegation that Mr. Puga fired a weapon at anyone.</p> <p>Clark Decl. ¶ 16a.</p> <p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p> <p>As Puga was running, he never turned around to look at the officers.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 100:13-17.</p> <p>While Puga was running, his hands were moving in a running motion.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 116:16-21.</p> <p>None of the videos that captured the shooting ever show Puga turn back towards the officers or point his hand back towards the officers.</p> <p>Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 0:00:50-01:44; Ex. 11 to Le Decl., Rubalcava Dashcam Video at 0:42:23-42:47; Kee Dashcam Video at 46:47-47:07.</p> <p>When Puga reached the northwest corner, he changed directions and started running north instead of towards the house on the corner.</p> <p>Ex. 4 to Le Decl., Adams Dep. 50:15-21; Ex. 7 to Le Decl., Mangerino Dep. 34:3-12.</p>

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3	Supporting Evidence	
4		Just prior to Puga going to the ground,
5		he was staggering as if he had been
6		struck by gunfire.
7		Ex. 5 to Le Decl., Vaccari Dep. 52:19-
8		53:4.
9		Puga then fell forward onto his chest
10		and stomach and onto the ground with
11		his hands beside him on the northwest
12		shoulder near the southbound lane,
13		some distance from the northwest
14		corner.
15		Ex. 1 to Le Decl., Kee Dep. 37:10-13;
16		Ex. 5 to Le Decl., Vaccari Dep. 53:11-
17		21; Ex. 7 to Le Decl., Mangerino Dep.
18		60:9-61:13.
19		Puga's hands were next to him when he
20		was on the ground.
21		Ex. 7 to Le Decl., Mangerino Dep.
22		61:7-13.
23		There was no gun in either of Puga's
24		hands immediately after Puga went to
25		the ground.
26		Ex. 4 to Le Decl., Adams Dep. 52:18-
27		22.
28	148. Puga running still armed was able to turn around and fire within less than one half second. Clarke Decl. ¶ 16, Ex. AA – Jason Rebuttal Report pgs. 2-3	<u>Disputed.</u> As soon as Puga turned to run, officers shot at Puga. Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never had a gun in his hand.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never pointed his hand or a weapon in any specific direction or at any officer.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 64:8-17; Ex. 8 to Le Decl., Gonzalez Dep. 97:1-6.</p> <p>Puga never fired a weapon at any officer.</p> <p>Ex. 7 to Le Decl., Mangerino Dep. 37:14-16; Ex. 8 to Le Decl., Gonzalez Dep. 132:22-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Neither smoke nor any muzzle flash ever came from Puga.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 20:10-12; Ex. 4 to Le Decl., Adams Dep. 36:12-18; Ex. 5 to Le Decl., Vaccari Dep. 48:14-20; Ex. 8 to Le Decl., Gonzalez Dep. 99:8-25.</p> <p>None of the videos capturing the incident show Puga with a gun in his hand.</p>

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		Ex. 1 to Le Decl., Kee Dep. 7:16-18;
4		Ex. 5 to Le Decl., Vaccari Dep. 9:15-
5		18.
6		None of the videos capturing the
7		incident show Puga ever pointing a gun
8		at anyone.
9		Ex. 1 to Le Decl., Kee Dep. 7:22-24;
10		Ex. 5 to Le Decl., Vaccari Dep. 9:19-
11		21.
12		None of the videos capturing the
13		incident show Puga ever firing a gun.
14		Ex. 1 to Le Decl., Kee Dep. 7:19-21.
15		None of the videos capturing the
16		incident show any muzzle flash coming
17		from the area Puga was at.
18		Ex. 1 to Le Decl., Kee Dep. 92:14-16;
19		Ex. 2 to Le Decl., Rubalcava Dep.
20		93:17-19
21		Gonzalez saw Puga's waistband when
22		he turned to take off running and never
23		saw a gun in his waistband.
24		Ex. 8 to Le Decl., Gonzalez Dep.
25		95:15-25, 115:18-21.
26		There were no bullet impacts or
27		casings found near the area of the
28		initial shooting that would support the
		allegation that Mr. Puga fired a weapon
		at anyone.
		Clark Decl. ¶ 16a
		As Puga was running, he never turned
		around to look at the officers.
		Ex. 8 to Le Decl., Gonzalez Dep.
		100:13-17.
		While Puga was running, his hands
		were moving in a running motion.

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 8 to Le Decl., Gonzalez Dep. 116:16-21.</p> <p>None of the videos that captured the shooting ever show Puga turn back towards the officers or point his hand back towards the officers.</p> <p>Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 0:00:50-01:44; Ex. 11 to Le Decl., Rubalcava Dashcam Video at 0:42:23-42:47; Kee Dashcam Video at 46:47-47:07.</p> <p>When asked during his interview with detectives after the incident as to what caused Rubalcava to fire his second volley, Rubalcava answered that Puga was still fleeing but that Puga was not doing anything with any alleged weapon.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 55:8-22.</p> <p>Blackwood was trying to assess while he was firing by looking for a gun but could not see Puga's hands and therefore never saw Puga with a gun while Puga was running away.</p> <p>Ex. 3 to Le Decl., 24:10-13, 30:23-31:11, 45:23-46:2.</p> <p>During the time Blackwood was shooting at Puga, Blackwood could not see Puga's hands.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 36:18-20.</p>
<p>149. Puga running still armed could point the handgun over his shoulder and fired backwards.</p> <p>Clarke Decl. ¶ 16, Ex. AA – Jason Rebuttal Report pgs. 2-3</p>	<p><u>Disputed.</u></p> <p>As soon as Puga turned to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-</p>

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		17, 37:11-13; Gonzalez Dep. 42:25-
4		43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10
5		to Le Decl., Mangerino Cellphone
6		Video at 0:00:51-00:54; Ex. 13 to Le
7		Decl., Gonzalez Cellphone Video at
8		0:06:24-06:31.
9		Puga never grabbed or aggressively
10		reached for anything prior to the shots.
11		Ex. 8 to Le Decl., Gonzalez Dep. 16:1-
12		3; Ex. 14 to Le Decl., Botten Dep.
13		129:13-25, 130:6-12.
14		Puga never had a gun in his hand.
15		Ex. 8 to Le Decl., Gonzalez Dep.
16		97:16-25, 83:21-24; Ex. 14 to Le Decl.,
17		Botten Dep. 129:13-25, 130:6-12.
18		Puga never pointed his hand or a
19		weapon in any specific direction or at
20		any officer.
21		Ex. 5 to Le Decl., Vaccari Dep. 64:8-
22		17; Ex. 8 to Le Decl., Gonzalez Dep.
23		97:1-6.
24		Puga never fired a weapon at any
25		officer.
26		Ex. 7 to Le Decl., Mangerino Dep.
27		37:14-16; Ex. 8 to Le Decl., Gonzalez
28		Dep. 132:22-24; Ex. 14 to Le Decl.,
		Botten Dep. 129:13-25, 130:6-12.
		Neither smoke nor any muzzle flash
		ever came from Puga.
		Ex. 3 to Le Decl., Blackwood Dep.
		20:10-12; Ex. 4 to Le Decl., Adams
		Dep. 36:12-18; Ex. 5 to Le Decl.,
		Vaccari Dep. 48:14-20; Ex. 8 to Le
		Decl., Gonzalez Dep. 99:8-25.
		None of the videos capturing the
		incident show Puga with a gun in his
		hand.

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		Ex. 1 to Le Decl., Kee Dep. 7:16-18;
4		Ex. 5 to Le Decl., Vaccari Dep. 9:15-
5		18.
6		None of the videos capturing the
7		incident show Puga ever pointing a gun
8		at anyone.
9		Ex. 1 to Le Decl., Kee Dep. 7:22-24;
10		Ex. 5 to Le Decl., Vaccari Dep. 9:19-
11		21.
12		None of the videos capturing the
13		incident show Puga ever firing a gun.
14		Ex. 1 to Le Decl., Kee Dep. 7:19-21.
15		None of the videos capturing the
16		incident show any muzzle flash coming
17		from the area Puga was at.
18		Ex. 1 to Le Decl., Kee Dep. 92:14-16;
19		Ex. 2 to Le Decl., Rubalcava Dep.
20		93:17-19
21		Gonzalez saw Puga's waistband when
22		he turned to take off running and never
23		saw a gun in his waistband.
24		Ex. 8 to Le Decl., Gonzalez Dep.
25		95:15-25, 115:18-21.
26		There were no bullet impacts or
27		casings found near the area of the
28		initial shooting that would support the
		allegation that Mr. Puga fired a weapon
		at anyone.
		Clark Decl. ¶ 16a
		As Puga was running, he never turned
		around to look at the officers.
		Ex. 8 to Le Decl., Gonzalez Dep.
		100:13-17.
		While Puga was running, his hands
		were moving in a running motion.

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3	Supporting Evidence	
4		Ex. 8 to Le Decl., Gonzalez Dep. 116:16-21.
5		None of the videos that captured the shooting ever show Puga turn back towards the officers or point his hand back towards the officers.
6		Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 0:00:50-01:44; Ex. 11 to Le Decl., Rubalcava Dashcam Video at 0:42:23-42:47; Kee Dashcam Video at 46:47-47:07.
7		When asked during his interview with detectives after the incident as to what caused Rubalcava to fire his second volley, Rubalcava answered that Puga was still fleeing but that Puga was not doing anything with any alleged weapon.
8		Ex. 2 to Le Decl., Rubalcava Dep. 55:8-22.
9		Blackwood was trying to assess while he was firing by looking for a gun but could not see Puga's hands and therefore never saw Puga with a gun while Puga was running away.
10		Ex. 3 to Le Decl., 24:10-13, 30:23-31:11, 45:23-46:2.
11		During the time Blackwood was shooting at Puga, Blackwood could not see Puga's hands.
12		Ex. 3 to Le Decl., Blackwood Dep. 36:18-20.
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23		
24	150. Puga running still armed could point the handgun around his torso and fire backwards.	<u>Disputed.</u>
25		As soon as Puga turned to run, officers shot at Puga.
26	Clarke Decl. ¶ 16, Ex. AA – Jason Rebuttal Report pgs. 2-3	Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-
27		
28		

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		17, 37:11-13; Gonzalez Dep. 42:25-
4		43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10
5		to Le Decl., Mangerino Cellphone
6		Video at 0:00:51-00:54; Ex. 13 to Le
7		Decl., Gonzalez Cellphone Video at
8		0:06:24-06:31.
9		Puga never grabbed or aggressively
10		reached for anything prior to the shots.
11		Ex. 8 to Le Decl., Gonzalez Dep. 16:1-
12		3; Ex. 14 to Le Decl., Botten Dep.
13		129:13-25, 130:6-12.
14		Puga never had a gun in his hand.
15		Ex. 8 to Le Decl., Gonzalez Dep.
16		97:16-25, 83:21-24; Ex. 14 to Le Decl.,
17		Botten Dep. 129:13-25, 130:6-12.
18		Puga never pointed his hand or a
19		weapon in any specific direction or at
20		any officer.
21		Ex. 5 to Le Decl., Vaccari Dep. 64:8-
22		17; Ex. 8 to Le Decl., Gonzalez Dep.
23		97:1-6.
24		Puga never fired a weapon at any
25		officer.
26		Ex. 7 to Le Decl., Mangerino Dep.
27		37:14-16; Ex. 8 to Le Decl., Gonzalez
28		Dep. 132:22-24; Ex. 14 to Le Decl.,
		Botten Dep. 129:13-25, 130:6-12.
		Neither smoke nor any muzzle flash
		ever came from Puga.
		Ex. 3 to Le Decl., Blackwood Dep.
		20:10-12; Ex. 4 to Le Decl., Adams
		Dep. 36:12-18; Ex. 5 to Le Decl.,
		Vaccari Dep. 48:14-20; Ex. 8 to Le
		Decl., Gonzalez Dep. 99:8-25.
		None of the videos capturing the
		incident show Puga with a gun in his
		hand.

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		Ex. 1 to Le Decl., Kee Dep. 7:16-18;
4		Ex. 5 to Le Decl., Vaccari Dep. 9:15-
5		18.
6		None of the videos capturing the
7		incident show Puga ever pointing a gun
8		at anyone.
9		Ex. 1 to Le Decl., Kee Dep. 7:22-24;
10		Ex. 5 to Le Decl., Vaccari Dep. 9:19-
11		21.
12		None of the videos capturing the
13		incident show Puga ever firing a gun.
14		Ex. 1 to Le Decl., Kee Dep. 7:19-21.
15		None of the videos capturing the
16		incident show any muzzle flash coming
17		from the area Puga was at.
18		Ex. 1 to Le Decl., Kee Dep. 92:14-16;
19		Ex. 2 to Le Decl., Rubalcava Dep.
20		93:17-19
21		Gonzalez saw Puga's waistband when
22		he turned to take off running and never
23		saw a gun in his waistband.
24		Ex. 8 to Le Decl., Gonzalez Dep.
25		95:15-25, 115:18-21.
26		There were no bullet impacts or
27		casings found near the area of the
28		initial shooting that would support the
		allegation that Mr. Puga fired a weapon
		at anyone.
		Clark Decl. ¶ 16a
		As Puga was running, he never turned
		around to look at the officers.
		Ex. 8 to Le Decl., Gonzalez Dep.
		100:13-17.
		While Puga was running, his hands
		were moving in a running motion.

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		
4		Ex. 8 to Le Decl., Gonzalez Dep. 116:16-21.
5		None of the videos that captured the shooting ever show Puga turn back towards the officers or point his hand back towards the officers.
6		Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 0:00:50-01:44; Ex. 11 to Le Decl., Rubalcava Dashcam Video at 0:42:23-42:47; Kee Dashcam Video at 46:47-47:07.
7		When asked during his interview with detectives after the incident as to what caused Rubalcava to fire his second volley, Rubalcava answered that Puga was still fleeing but that Puga was not doing anything with any alleged weapon.
8		Ex. 2 to Le Decl., Rubalcava Dep. 55:8-22.
9		Blackwood was trying to assess while he was firing by looking for a gun but could not see Puga's hands and therefore never saw Puga with a gun while Puga was running away.
10		Ex. 3 to Le Decl., 24:10-13, 30:23-31:11, 45:23-46:2.
11		During the time Blackwood was shooting at Puga, Blackwood could not see Puga's hands.
12		Ex. 3 to Le Decl., Blackwood Dep. 36:18-20.
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24	151. Puga was still breathing when the officers approached.	<u>Undisputed.</u>
25		
26	Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 57:6-8; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 55:23-56:9; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 54:6-9	
27		
28		

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>152. The officers still did not see where Puga's gun went because he did not drop it while he was running.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 86:2-4; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 52:18-22; Clarke Decl. ¶ 11, Ex. V – Kee Depo. 85:1-4</p>	<p>Disputed to the extent that this suggests Puga had a gun in his hand prior to running and while he was running.</p> <p>As soon as Puga turned to run, officers shot at Puga.</p> <p>Ex. 3 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never had a gun in his hand.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never pointed his hand or a weapon in any specific direction or at any officer.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 64:8-17; Ex. 8 to Le Decl., Gonzalez Dep. 97:1-6.</p> <p>Puga never fired a weapon at any officer.</p> <p>Ex. 7 to Le Decl., Mangerino Dep. 37:14-16; Ex. 8 to Le Decl., Gonzalez Dep. 132:22-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p>

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		Neither smoke nor any muzzle flash
4		ever came from Puga.
5		Ex. 3 to Le Decl., Blackwood Dep.
6		20:10-12; Ex. 4 to Le Decl., Adams
7		Dep. 36:12-18; Ex. 5 to Le Decl.,
8		Vaccari Dep. 48:14-20; Ex. 8 to Le
9		Decl., Gonzalez Dep. 99:8-25.
10		None of the videos capturing the
11		incident show Puga with a gun in his
12		hand.
13		Ex. 1 to Le Decl., Kee Dep. 7:16-18;
14		Ex. 5 to Le Decl., Vaccari Dep. 9:15-
15		18.
16		None of the videos capturing the
17		incident show Puga ever pointing a gun
18		at anyone.
19		Ex. 1 to Le Decl., Kee Dep. 7:22-24;
20		Ex. 5 to Le Decl., Vaccari Dep. 9:19-
21		21.
22		None of the videos capturing the
23		incident show Puga ever firing a gun.
24		Ex. 1 to Le Decl., Kee Dep. 7:19-21.
25		None of the videos capturing the
26		incident show any muzzle flash coming
27		from the area Puga was at.
28		Ex. 1 to Le Decl., Kee Dep. 92:14-16;
		Ex. 2 to Le Decl., Rubalcava Dep.
		93:17-19
		Gonzalez saw Puga's waistband when
		he turned to take off running and never
		saw a gun in his waistband.
		Ex. 8 to Le Decl., Gonzalez Dep.
		95:15-25, 115:18-21.
		There were no bullet impacts or
		casings found near the area of the
		initial shooting that would support the

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		allegation that Mr. Puga fired a weapon
4		at anyone.
5		Clark Decl. ¶ 17a
6		As Puga was running, he never turned
7		around to look at the officers.
8		Ex. 8 to Le Decl., Gonzalez Dep.
9		100:13-17.
10		While Puga was running, his hands
11		were moving in a running motion.
12		Ex. 8 to Le Decl., Gonzalez Dep.
13		116:16-21.
14		None of the videos that captured the
15		shooting ever show Puga turn back
16		towards the officers or point his hand
17		back towards the officers.
18		Ex. 10 to Le Decl., Erin Mangerino
19		Cellphone Video at 0:00:50-01:44; Ex.
20		11 to Le Decl., Rubalcava Dashcam
21		Video at 0:42:23-42:47; Kee Dashcam
22		Video at 46:47-47:07.
23		When asked during his interview with
24		detectives after the incident as to what
25		caused Rubalcava to fire his second
26		volley, Rubalcava answered that Puga
27		was still fleeing but that Puga was not
28		doing anything with any alleged
		weapon.
		Ex. 2 to Le Decl., Rubalcava Dep.
		55:8-22.
		Blackwood was trying to assess while
		he was firing by looking for a gun but
		could not see Puga's hands and
		therefore never saw Puga with a gun
		while Puga was running away.
		Ex. 3 to Le Decl., 24:10-13, 30:23-
		31:11, 45:23-46:2.

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>During the time Blackwood was shooting at Puga, Blackwood could not see Puga's hands.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 36:18-20.</p>
<p>153. Puga had fallen on his hands in a prone position.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 56:12-21</p>	<p><u>Disputed.</u></p> <p>Puga then fell forward onto his chest and stomach and onto the ground with his hands beside him on the northwest shoulder near the southbound lane, some distance from the northwest corner.</p> <p>Ex. 1 to Le Decl., Kee Dep. 37:10-13; Ex. 5 to Le Decl., Vaccari Dep. 53:11-21; Ex. 7 to Le Decl., Mangerino Dep. 60:9-61:13.</p> <p>Puga's hands were next to him when he was on the ground.</p> <p>Ex. 7 to Le Decl., Mangerino Dep. 61:7-13.</p>
<p>154. Officers continued to give verbal commands to Puga to gain compliance.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 56:12-21</p>	<p><u>Objection.</u> Vague and ambiguous as phrased.</p>
<p>155. Vaccari deployed the taser twice in case there was another element of force or a threat posed by Puga.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 56:22-57:15</p>	<p><u>Objection.</u> The cited evidence does not support the alleged fact.</p> <p><u>Disputed</u> that Puga posed any threat to the officers after he had gone to the ground and prior to and during the Taser deployments. Further <u>disputed</u></p>

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		that deploying the Taser twice was
4		reasonable.
5		As soon as Puga turned to run, officers
6		shot at Puga.
7		Ex. 2 to Le Decl., Rubalcava Dep.
8		60:20-61:1; Ex. 5 to Le Decl., Vaccari
9		Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le
10		Decl., Mangerino Dep. 34:3-9, 36:15-
11		17, 37:11-13; Gonzalez Dep. 42:25-
12		43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10
13		to Le Decl., Mangerino Cellphone
14		Video at 0:00:51-00:54; Ex. 13 to Le
15		Decl., Gonzalez Cellphone Video at
16		0:06:24-06:31.
17		Puga never grabbed or aggressively
18		reached for anything prior to the shots.
19		Ex. 8 to Le Decl., Gonzalez Dep. 16:1-
20		3; Ex. 14 to Le Decl., Botten Dep.
21		129:13-25, 130:6-12.
22		Puga never had a gun in his hand.
23		Ex. 8 to Le Decl., Gonzalez Dep.
24		97:16-25, 83:21-24; Ex. 14 to Le Decl.,
25		Botten Dep. 129:13-25, 130:6-12.
26		Puga never pointed his hand or a
27		weapon in any specific direction or at
28		any officer.
		Ex. 5 to Le Decl., Vaccari Dep. 64:8-
		17; Ex. 8 to Le Decl., Gonzalez Dep.
		97:1-6.
		Puga never fired a weapon at any
		officer.
		Ex. 7 to Le Decl., Mangerino Dep.
		37:14-16; Ex. 8 to Le Decl., Gonzalez
		Dep. 132:22-24; Ex. 14 to Le Decl.,
		Botten Dep. 129:13-25, 130:6-12.
		Neither smoke nor any muzzle flash
		ever came from Puga.

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		Ex. 3 to Le Decl., Blackwood Dep.
4		20:10-12; Ex. 4 to Le Decl., Adams
5		Dep. 36:12-18; Ex. 5 to Le Decl.,
6		Vaccari Dep. 48:14-20; Ex. 8 to Le
7		Decl., Gonzalez Dep. 99:8-25.
8		None of the videos capturing the
9		incident show Puga with a gun in his
10		hand.
11		Ex. 1 to Le Decl., Kee Dep. 7:16-18;
12		Ex. 5 to Le Decl., Vaccari Dep. 9:15-
13		18.
14		None of the videos capturing the
15		incident show Puga ever pointing a gun
16		at anyone.
17		Ex. 1 to Le Decl., Kee Dep. 7:22-24;
18		Ex. 5 to Le Decl., Vaccari Dep. 9:19-
19		21.
20		None of the videos capturing the
21		incident show Puga ever firing a gun.
22		Ex. 1 to Le Decl., Kee Dep. 7:19-21.
23		None of the videos capturing the
24		incident show any muzzle flash coming
25		from the area Puga was at.
26		Ex. 1 to Le Decl., Kee Dep. 92:14-16;
27		Ex. 2 to Le Decl., Rubalcava Dep.
28		93:17-19
		Gonzalez saw Puga's waistband when
		he turned to take off running and never
		saw a gun in his waistband.
		Ex. 8 to Le Decl., Gonzalez Dep.
		95:15-25, 115:18-21.
		There were no bullet impacts or
		casings found near the area of the
		initial shooting that would support the
		allegation that Mr. Puga fired a weapon
		at anyone.

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		Clark Decl. ¶ 16a
4		As Puga was running, he never turned
5		around to look at the officers.
6		Ex. 8 to Le Decl., Gonzalez Dep.
7		100:13-17.
8		While Puga was running, his hands
9		were moving in a running motion.
10		Ex. 8 to Le Decl., Gonzalez Dep.
11		116:16-21.
12		None of the videos that captured the
13		shooting ever show Puga turn back
14		towards the officers or point his hand
15		back towards the officers.
16		Ex. 10 to Le Decl., Erin Mangerino
17		Cellphone Video at 0:00:50-01:44; Ex.
18		11 to Le Decl., Rubalcava Dashcam
19		Video at 0:42:23-42:47; Kee Dashcam
20		Video at 46:47-47:07.
21		When asked during his interview with
22		detectives after the incident as to what
23		caused Rubalcava to fire his second
24		volley, Rubalcava answered that Puga
25		was still fleeing but that Puga was not
26		doing anything with any alleged
27		weapon.
28		Ex. 2 to Le Decl., Rubalcava Dep.
		55:8-22.
		Blackwood was trying to assess while
		he was firing by looking for a gun but
		could not see Puga's hands and
		therefore never saw Puga with a gun
		while Puga was running away.
		Ex. 3 to Le Decl., 24:10-13, 30:23-
		31:11, 45:23-46:2.
		During the time Blackwood was
		shooting at Puga, Blackwood could not
		see Puga's hands.
		Ex. 3 to Le Decl., Blackwood Dep.
		36:18-20.

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Blackwood was firing at Puga's left side while Puga was hunched over as if he had been struck by gunshots.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 29:9-20.</p> <p>When Blackwood saw Puga stumble, he believed that some shots he fired may have struck Puga.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 39:24-40:3.</p> <p>Just prior to Puga going to the ground, he was staggering as if he had been struck by gunfire.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 52:19-53:4.</p> <p>There were gunshots immediately before Puga went to the ground.</p> <p>Ex. 5 to Le Decl., Vaccari Dep. 53:5-7.</p> <p>Puga's hands were next to him when he was on the ground.</p> <p>Ex. 7 to Le Decl., Mangerino Dep. 61:7-13.</p> <p>There was no gun in either of Puga's hands immediately after Puga went to the ground.</p> <p>Ex. 4 to Le Decl., Adams Dep. 52:18-22.</p> <p>Puga did not pose a threat to anyone after falling to the ground and appeared incapacitated.</p>

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		Ex. 1 to Le Decl., Kee Dep. 37:17-
4		38:3; Ex. 4 to Le Decl., Adams Dep.
5		52:1-6.
6		Several shots were fired at Puga after
7		he fell to the ground.
8		Ex. 1 to Le Decl., Kee Dep. 68:17-24;
9		Ex. 3 to Le Decl., 25:8-12; Ex. 5 to Le
10		Decl., Vaccari Dep. 43:11-24; Ex. 10
11		to Le Decl., Mangerino Cellphone
12		Video at 0:01:04-01:12; Ex. 11 to Le
13		Decl., Blackwood MVARs Part 4 at
14		0:42:37-42:45.
15		The probes made contact during the
16		first Taser deployment and there was
17		tensing and muscle reaction and Puga
18		appeared to lock up.
19		Ex. 4 to Le Decl., Adams Dep. 57:20-
20		25; Ex. 5 to Le Decl., Vaccari Dep.
21		55:6-9.
22		No one went in to handcuff Puga
23		during the first Taser cycle.
24		Ex. 5 to Le Decl., Vaccari Dep. 62:23-
25		25.
26		Vaccari later concedes during his
27		interview with detectives that it would
28		have been a much better option to go in
		and handcuff Puga while he was under
		the power of the initial Taser
		deployment instead of activating the
		Taser a second time.

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 6 to Le Decl., Vaccari Dep. 90:3-11.</p> <p>Officers are also trained on the concept of “cuffing under power” in which an officer can safely go in and handcuff a suspect while the suspect is under effects of the neuromuscular incapacitation of the Taser.</p> <p>Clark Decl. ¶ 22b.</p> <p>The second Taser deployment violated standard police practices and training because it was clear from the first Taser deployment that Mr. Puga was incapacitated when his muscles responded to the Taser deployment but he did not respond, no verbal warning was given prior to the second Taser deployment, and Sergeant Vaccari admits that the second deployment would have been unnecessary had he considered at the time to go in and handcuff Mr. Puga while he was under the power of the Taser during the first Taser deployment.</p> <p>Clark Decl. ¶ 22b.</p>
<p>156. The taser made Puga's body lock twice, indicative the taser was having an effect on Puga.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 57:23-58:10; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 55:1-17, 56:20-22</p>	<p><u>Undisputed.</u></p>

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3	157. Puga was then handcuffed by	Objection. Vague as to time.
4	Rubalcava.	
5	Clarke Decl. ¶ 12, Ex. W – Rubalcava	<u>Undisputed</u> that Rubalcava handcuffed
6	Depo. 58:6-7, Clarke Decl. ¶ 13, Ex. X	Puga after the two Taser deployments.
7	– Blackwood Depo. 26:15-18; Clarke	
8	Decl. ¶ 10, Ex. U – Vaccari Depo.	
9	56:23-25; Clarke Decl. ¶ 9, Ex. T –	
10	Adams Depo. 58:20-23	
11	158. Puga was then rolled over.	Objection. Vague as to time.
12		
13	Clarke Decl. ¶ 12, Ex. W – Rubalcava	<u>Undisputed</u> that Puga was rolled over
14	Depo. 58:8-9	onto his back after he was handcuffed.
15	159. Puga's firearm was found under	Objection. Vague as to "under Puga."
16	Puga.	
17	Clarke Decl. ¶ 11, Ex. V – Kee Depo.	Disputed that a firearm was found
18	89:22-90:1	underneath Puga after he went to the
19		ground.
20		Rubalcava claims that the gun was
21		found in Puga's hands, underneath his
22		stomach as he laid facing down the on
23		the ground.
24		Ex. 2 to Le Decl., Rubalcava Dep.
25		86:10-16.
26		Puga fell forward onto his chest and
27		stomach and onto the ground with his
28		hands beside him on the northwest
		shoulder near the southbound lane,
		some distance from the northwest
		corner.
		Ex. 1 to Le Decl., Kee Dep. 37:10-13;
		Ex. 5 to Le Decl., Vaccari Dep. 53:11-

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>21; Ex. 7 to Le Decl., Mangerino Dep. 60:9-61:13.</p> <p>Puga's hands were next to him when he was on the ground.</p> <p>Ex. 7 to Le Decl., Mangerino Dep. 61:7-13.</p> <p>There was no gun in either of Puga's hands immediately after Puga went to the ground.</p> <p>Ex. 4 to Le Decl., Adams Dep. 52:18-22.</p>
<p>160. Puga's firearm had a shiny slide on the top of it.</p> <p>Clarke Decl. ¶ 11, Ex. V – Kee Depo. 89:22-90:1, Jason Decl. ¶ 18, Ex. H</p>	<p><u>Objection.</u> Vague as to "shiny."</p> <p><u>Disputed</u> to the extent that this suggests that the alleged reflective object allegedly seen around the area of Puga's hand while he was running was the slide of the firearm found near Puga after the shooting.</p> <p>Throughout the incident, Puga wore a polished, silver watch on his left wrist.</p> <p>See Ex. 19 to Le Decl., Photograph of Puga's Hands after Shooting.</p>
<p>161. The gun was tucked under his stomach.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 86:10-16</p>	<p><u>Objection.</u> Vague as to "tucked under his stomach."</p> <p><u>Disputed.</u></p>

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3	Supporting Evidence	
4		Puga never grabbed or aggressively
5		reached for anything prior to the shots.
6		Ex. 8 to Le Decl., Gonzalez Dep. 16:1-
7		3; Ex. 14 to Le Decl., Botten Dep.
8		129:13-25, 130:6-12.
9		Puga never had a gun in his hand.
10		Ex. 8 to Le Decl., Gonzalez Dep.
11		97:16-25, 83:21-24; Ex. 14 to Le Decl.,
12		Botten Dep. 129:13-25, 130:6-12.
13		Puga then fell forward onto his chest
14		and stomach and onto the ground with
15		his hands beside him on the northwest
16		shoulder near the southbound lane,
17		some distance from the northwest
18		corner.
19		Ex. 1 to Le Decl., Kee Dep. 37:10-13;
20		Ex. 5 to Le Decl., Vaccari Dep. 53:11-
21		21; Ex. 7 to Le Decl., Mangerino Dep.
22		60:9-61:13.
23		Puga's hands were next to him when he
24		was on the ground.
25		Ex. 7 to Le Decl., Mangerino Dep.
26		61:7-13.
27		There was no gun in either of Puga's
28		hands immediately after Puga went to
		the ground.
		Ex. 4 to Le Decl., Adams Dep. 52:18-
		22.
	162. His arms were underneath him.	<u>Objection.</u> Vague as to time.

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3	Supporting Evidence	
4	Clarke Decl. ¶ 13, Ex. X – Blackwood	<u>Disputed</u> that Puga's arms were
5	Depo. 47:9-13	underneath him while Puga was prone
6		on his stomach, on the ground, after
7		falling.
8		Puga then fell forward onto his chest
9		and stomach and onto the ground with
10		his hands beside him on the northwest
11		shoulder near the southbound lane,
12		some distance from the northwest
13		corner.
14		Ex. 1 to Le Decl., Kee Dep. 37:10-13;
15		Ex. 5 to Le Decl., Vaccari Dep. 53:11-
16		21; Ex. 7 to Le Decl., Mangerino Dep.
17		60:9-61:13.
18		Puga's hands were next to him when he
19		was on the ground.
20		Ex. 7 to Le Decl., Mangerino Dep.
21		61:7-13.
22	163. The pistol that was found	<u>Undisputed.</u>
23	underneath Puga was a PMF	
24	(Personally Manufactured Firearm) or	
25	"ghost gun."	
26	Haag ¶¶ 19-20; Clarke Decl. ¶ 11, Ex.	
27	V – Kee Depo. 89:22-90:1	
28	164. The pistol next to Puga had a	<u>Objection.</u> Vague as to "partially
	partially removed magazine.	removed."
	Haag Decl. ¶ 20	<u>Undisputed</u> to the extent that the gun
		found near Puga had a magazine that
		was not fully seated.

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>165. A fired 9m cartridge was found next to the pistol.</p> <p>Haag ¶ 19</p>	<p><u>Objection.</u> Vague as to time.</p> <p><u>Disputed</u> that a fired 9mm cartridge was found next to the firearm near Puga immediately after the shooting when the officers went to handcuff Puga.</p> <p>After Puga went down, Kee did not find any other object on or around Puga's body other than the gun allegedly found near Puga.</p> <p>Ex. 1 to Le Decl., Kee Dep. 89:8-10.</p>
<p>166. The autopsy of Puga revealed he had 10 gunshot wounds.</p> <p>Clarke Decl. ¶ 14, Ex. Y – Jong Depo. 21:19-20</p>	<p><u>Undisputed.</u></p>
<p>167. Puga's cause of death was identified as being the gunshot wound to the mid-left back.</p> <p>Clarke Decl. ¶ 14, Ex. Y – Jong Depo. 7:1-5; 9:2-11:14</p>	<p><u>Undisputed.</u></p>
<p>168. The bullet that caused the death entered through the mid-left back</p> <p>Clarke Decl. ¶ 14, Ex. Y – Jong Depo. 9:2-4</p>	<p><u>Undisputed.</u></p>
<p>169. The bullet travelled through skin and soft tissue, ultimately getting lodged in soft tissue of the left upper chest.</p> <p>Clarke Decl. ¶ 14, Ex. Y – Jong Depo. 9:22-10:6</p>	<p><u>Undisputed.</u></p>

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3	Supporting Evidence	
4	170. The bullet then travelled through	<u>Undisputed.</u>
5	the rib cage.	
6	Clarke Decl. ¶ 14, Ex. Y – Jong Depo.	
7	9:22-10:6	
8	171. The bullet then travelled pierced	<u>Undisputed.</u>
9	the left lung.	
10	Clarke Decl. ¶ 14, Ex. Y – Jong Depo.	
11	9:22-10:6	
12	172. The bullet then travelled through	<u>Undisputed.</u>
13	the front part of the rib cage.	
14	Clarke Decl. ¶ 14, Ex. Y – Jong Depo.	
15	9:22-10:6	
16	173. The bullet ultimately got lodged in	<u>Undisputed.</u>
17	soft tissue of the left upper chest.	
18	Clarke Decl. ¶ 14, Ex. Y – Jong Depo.	
19	9:22-10:6	
20	174. This bullet travelled back to front,	<u>Undisputed.</u>
21	angled left to right, and upward.	
22	Clarke Decl. ¶ 14, Ex. Y – Jong Depo.	
23	10:25-11:2	
24	175. This mid-back bullet was fatal.	
25	Clarke Decl. ¶ 14, Ex. Y – Jong Depo.	<u>Undisputed</u> that the gunshot wound to
26	11:13-14	the mid left back was fatal.
27	176. The mid-back bullet was fatal	<u>Undisputed</u> that the gunshot wound to
28	because it went through the lung and	the mid left back was fatal because it
	created a defect wherein air could not	went through the lung and created a
	move into the chest cavity.	defect wherein air could not move into
	Clarke Decl. ¶ 14, Ex. Y – Jong Depo.	the chest cavity.
	11:13-21, 21:23-24:3	
	177. Additionally, when the bullet hit	
	the lung, blood went into the chest	

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3	Supporting Evidence	
4	cavity which compressed the lung and	<u>Undisputed</u> that the gunshot wound to
5	created difficulty for the body to	the mid left back hut the lung, causing
6	oxygenate blood.	blood to go into the chest cavity, which
7	Clarke Decl. ¶ 14, Ex. Y – Jong Depo.	compressed the lung and created
8	11:13-21, 21:23-24:3	difficulty for the body to oxygenate
9		blood.
10	178. The bullet identified by the	<u>Undisputed.</u>
11	coroner as being the fatal shot was	
12	removed from the chest cavity.	
13	Haag ¶ 14	
14	179. The removed bullet from the fatal	<u>Undisputed.</u>
15	shot was a fully expanded 5.56 mm	
16	(.223 caliber) rifle bullet.	
17	Haag ¶ 14	
18	180. Only Sergeant Kee and Officer	<u>Undisputed.</u>
19	Blackwood were armed with firearms	
20	that deployed .223 caliber rifle bullets.	
21	Haag ¶ 11	
22	181. Because only Kee and Blackwood	<u>Undisputed.</u>
23	had .223 caliber rifle bullets, the fatal	
24	wound that caused Puga's death was	
25	fired by either Kee or Blackwood.	
26	Haag ¶ 14	
27	182. Deputy Adams is therefore	<u>Disputed.</u>
28	excluded as having caused the fatal	Puga sustained a gunshot wound to the
	injury.	lower left back with a trajectory of
	Haag ¶ 15	back-to-front, left-to-right, and upward.
		Ex. 18 to Le Decl., Jong Dep. 13:17-
		20, 14:14-16.

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		The gunshot wound to the lower left
4		back could have also been fatal after a
5		longer period of time.
6		Ex. 18 to Le Decl., Jong Dep. 30:7-
7		31:2.
8		Just prior to Puga going to the ground,
9		he was staggering as if he had been
10		struck by gunfire.
11		Ex. 5 to Le Decl., Vaccari Dep. 52:19-
12		53:4.
13		There were gunshots immediately
14		before Puga went to the ground.
15		Ex. 5 to Le Decl., Vaccari Dep. 53:5-7.
16		Puga then fell forward onto his chest
17		and stomach and onto the ground with
18		his hands beside him on the northwest
19		shoulder near the southbound lane,
20		some distance from the northwest
21		corner.
22		Ex. 1 to Le Decl., Kee Dep. 37:10-13;
23		Ex. 5 to Le Decl., Vaccari Dep. 53:11-
24		21; Ex. 7 to Le Decl., Mangerino Dep.
25		60:9-61:13.
26		Several shots were fired at Puga after
27		he fell to the ground.
28		Ex. 1 to Le Decl., Kee Dep. 68:17-24;
		Ex. 3 to Le Decl., 25:8-12; Ex. 5 to Le
		Decl., Vaccari Dep. 43:11-24; Ex. 10
		to Le Decl., Mangerino Cellphone

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Video at 0:01:04-01:12; Ex. 11 to Le Decl., Blackwood MVARs Part 4 at 0:42:37-42:45.</p> <p>After Puga fell to the ground, several shots are fired and there is a pause before the final two, almost simultaneous volleys of shots from two different firearms are heard.</p> <p>Ex. 10 to Le Decl., Erin Magerino Cellphone Video at 01:02-01:10.</p> <p>As the last volleys are going off, Puga can be seen jerking on the ground as if struck by the gunshots.</p> <p>Ex. 10 to Le Decl., Erin Magerino Cellphone Video at 01:06-01:10.</p>
<p>183. Deputy Adams firearm used 9mm ammunition.</p> <p>Clarke Decl. ¶ 9, Ex. T – Adams Depo. 31:18-32:2; Haag Decl. ¶ 11</p>	<p><u>Undisputed.</u></p>
<p>184. Only two 9mm bullets were recovered from Puga during the autopsy.</p> <p>Haag ¶ 16</p>	<p><u>Undisputed.</u></p>
<p>185. The 9mm bullets were associated with gunshot wounds to the right flank and left thigh.</p> <p>Haag ¶ 16</p>	<p><u>Undisputed.</u></p>
<p>186. The wounds to the right flank and left thigh were identified as non-fatal per the coroner.</p>	<p><u>Undisputed.</u></p>

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3	Supporting Evidence	
4	Haag ¶ 16	
5	187. These bullets both ricocheted	<u>Disputed.</u>
6	before striking Puga.	There are no bullet wounds that appear
7	Haag ¶ 17	to have been caused by a bullet striking
8		an intermediary object or ricocheting
9		before striking Puga's body.
10		Ex. 19 to Le Decl., Jong Dep. 47:15-
11	188. Because of the general upward	48:2.
12	flight path of ricocheted bullets and	<u>Objection.</u> Vague as to "these
13	general wound path, these wounds	wounds."
14	were sustained prior to Puga falling to	<u>Disputed</u> that the wounds to Puga's
15	the ground.	right flank and left thigh were caused
16	Haag ¶ 18	by ricocheted bullets and sustained
17		prior to Puga falling to the ground.
18		There are no bullet wounds that appear
19		to have been caused by a bullet striking
20		an intermediary object or ricocheting
21		before striking Puga's body.
22		Ex. 19 to Le Decl., Jong Dep. 47:15-
23		48:2.
24		The trajectories of the gunshot wounds
25		to the left thigh are consistent with the
26		body going towards the ground or
27		away from the shooter.
28		Ex. 19 to Le Decl., Jong Dep. 16:22-
		17:2.
	189. Maria Cadena is the mother to	<u>Undisputed.</u>
	minor L.C.	

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3	Supporting Evidence	
4	Clarke Decl. ¶ 15, Ex. Z – Cadena Depo 11:23-12:20	
5	190. Cadena testified that Cadena and Hector Puga were not in a relationship by the time Plaintiff L.C. was born.	<u>Undisputed.</u>
6		
7	Clarke Decl. ¶ 15, Ex. Z – Cadena Depo. 12:21-13:2, 25:17-19	
8	191. L.C. was born in 2013.	<u>Undisputed.</u>
9		
10	Clarke Decl. ¶ 15, Ex. Z – Cadena Depo. 12:19-20	
11	192. Puga was not listed as the father on L.C.'s birth certificate.	<u>Undisputed.</u>
12		
13	Clarke Decl. ¶ 15, Ex. Z – Cadena Depo. 34:16-21	
14	193. Puga was not listed on L.C.'s birth certificate because Puga did not want to be responsible for L.C.	<u>Disputed.</u>
15		After L.C. was born, Puga desperately wanted to see L.C.
16	Clarke Decl. ¶ 15, Ex. Z – Cadena Depo. 34:19-35:1	Ex. 21 to Le Decl., Cadena Dep. 37:16- 22.
17		At some point, Puga approached L.C.'s mother and told her that he would voluntarily support L.C. because she was his child.
18		Ex. 21 to Le Decl., Cadena Dep. 38:3- 7.
19		Puga told L.C.'s mother that he would buy L.C. whatever she needed or whatever L.C.'s mother needed.
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1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		Ex. 21 to Le Decl., Cadena Dep. 38:8-12.
4	194. Puga did not have an issue with	<u>Objection.</u> The cited evidence does not
5	another person being listed on the	support the alleged fact.
6	certificate as the father.	
7	Clarke Decl. ¶ 15, Ex. Z – Cadena	
8	Depo. 34:19-35:1, 37:24-38:2	
9	195. Cadena never let Puga see	<u>Disputed.</u>
10	Plaintiff L.C.	Cadena was aware that Puga would see
11	Clarke Decl. ¶ 15, Ex. Z – Cadena	L.C. whenever L.C. visited her
12	Depo. 26:6-10	grandmother, Puga's mother.
13		Ex. 21 to Le Decl., Cadena Dep. 26:6-13, 26:14-17, 27:10-13, 28:4-7.
14		
15	196. Cadena did not get along with	<u>Undisputed.</u>
16	Puga.	
17	Clarke Decl. ¶ 15, Ex. Z – Cadena	
18	Depo. 27:14-17	
19	197. She was concerned about his	<u>Undisputed.</u>
20	drinking if he were to be around L.C.	
21	Clarke Decl. ¶ 15, Ex. Z – Cadena	
22	Depo. 27:21-23	
23	198. Cadena was also concerned about	<u>Disputed</u> to the extent that this
24	his verbally abusive behavior.	suggests Cadena did not want Puga
25	Clarke Decl. ¶ 15, Ex. Z – Cadena	around L.C. because she was
26	Depo. 35:16-23	concerned about Puga's verbally
27		abusive behavior around L.C.
28		Cadena did not want Puga to be
		verbally aggressive with her around
		L.C.

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	Clarke Decl. ¶ 15, Ex. Z – Cadena Depo. 35:16-23
<p>199. Throughout L.C.'s life up to the incident, Puga only spoke to L.C. about 3 times.</p> <p>Clarke Decl. ¶ 15, Ex. Z – Cadena Depo. 28:21-24</p>	<p><u>Disputed.</u></p> <p>Puga would see L.C. at times when L.C. visited her grandmother, Puga's mother.</p> <p>Ex. 21 to Le Decl., Cadena Dep. 26:6-13, 28:4-7.</p> <p>L.C. visited Puga's mother approximately seven times.</p> <p>Ex. 21 to Le Decl., Cadena Dep. 26:14-17, 27:10-13.</p> <p>L.C. spoke to Puga over the phone approximately three times.</p> <p>Ex. 21 to Le Decl., Cadena Dep. 28:21-24.</p> <p>In the two years before Puga's passing, Puga would see L.C. at times when L.C. visited her aunt Susie, Puga's sister.</p> <p>Ex. 22 to Le Decl., Salas Dep. 30:10-20; 31:2-16, 81:6-10.</p>
<p>200. L.C. never received anything from Puga.</p> <p>Clarke Decl. ¶ 15, Ex. Z – Cadena Depo. 38:13-16</p>	<p><u>Undisputed.</u></p>
<p>201. There were no plans for L.C. to see Puga in the future prior to Puga dying.</p>	<p><u>Undisputed</u> to the extent that there was no specific plan in place for L.C. to see Puga at the time of Puga's death.</p>

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3	Supporting Evidence	
4	Clarke Decl. ¶ 15, Ex. Z – Cardena	
5	Depo. 29:6-8	
6	202. The Estate of Hector Javier Puga	<u>Undisputed.</u>
7	submitted his tort claim to the County	
8	of San Bernardino on November 23,	
9	2021.	
10	Clarke Decl. ¶ 4, Ex. O – Estate of	
11	Puga Tort Claim	
12	203. Antonia Salas Ubaldo submitted	<u>Undisputed.</u>
13	her tort claim to the County of San	
14	Bernardino on November 23, 2021.	
15	Clarke Decl. ¶ 5, Ex. P – Ubaldo Tort	
16	Claim	
17	204. I.H. submitted the tort claim to the	<u>Undisputed.</u>
18	County of San Bernardino on	
19	November 23, 2021.	
20	Clarke Decl. ¶ 6, Ex. Q – I.H. Tort	
21	Claim	
22	205. A.L. submitted the tort claim to	<u>Undisputed.</u>
23	the County of San Bernardino on	
24	November 23, 2021.	
25	Clarke Decl. ¶ 7, Ex. R – A.L. Tort	
26	Claim	
27	206. L.C. submitted the tort claim to	<u>Undisputed.</u>
28	the County of San Bernardino on	
	November 23, 2021.	
	Clarke Decl. ¶ 8, Ex. S – L.C. Tort	
	Claim	
	207. The tort claim from the Estate of	<u>Objection.</u> Compound.
	Hector Javier Puga alleges on	
	“February 17, 2021, at approximately	<u>Undisputed.</u>
	1:42 a.m., California Highway Patrol	

<p>1 Moving Party’s (County) 2 Uncontroverted Facts and 3 Supporting Evidence</p>	<p>Opposing Party’s Response to Cited Fact and Supporting Evidence</p>
<p>4 officers and County of San Bernardino 5 sheriff’s deputies encountered Mr. 6 Puga on a street in Hesperia, 7 California. In a populated, residential 8 area, officers and deputies fired 9 approximately 31 shots at Mr. Puga, 10 thereby using excessive force against 11 him. The shots struck three innocent 12 bystanders and fatally wounded Mr. 13 Puga. At the time of the shooting and 14 other undiscovered uses of force, Mr. 15 Puga did not pose an immediate threat 16 of death or serious bodily injury to any 17 person. After the shooting, the involved 18 officers and deputies failed to timely 19 summon medical attention for or 20 provide medical aid to Mr. Puga, 21 thereby further contributing to the 22 injuries and death. As a result of the 23 shooting and other uses of force, Mr. 24 Puga endured severe pain and 25 suffering, and lost his life and earning 26 capacity. At all relevant times, the 27 involved officers and deputies were 28 acting under color of state law and in the course and scope of their employment with the State of California and County of San Bernardino, respectively.”</p> <p>Clarke Decl. ¶ 4, Ex. O – Estate of Puga Tort Claim</p>	
<p>208. The tort claim from Antonia Salas Ubaldo alleges on “February 17, 2021, at approximately 1:42 a.m., California Highway Patrol officers and County of San Bernardino sheriff’s deputies encountered Mr. Puga on a street in</p>	<p><u>Objection.</u> Compound. <u>Undisputed.</u></p>

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3	Supporting Evidence	
4	Hesperia, California. In a populated,	
5	residential area, officers and deputies	
6	fired approximately 31 shots at Mr.	
7	Puga, thereby using excessive force	
8	against him. The shots struck three	
9	innocent bystanders and fatally	
10	wounded Mr. Puga. At the time of the	
11	shooting and other undiscovered uses	
12	of force, Mr. Puga did not pose an	
13	immediate threat of death or serious	
14	bodily injury to any person. After the	
15	shooting, the involved officers and	
16	deputies failed to timely summon	
17	medical attention for or provide	
18	medical aid to Mr. Puga, thereby	
19	further contributing to the injuries and	
20	death. As a result of the shooting and	
21	other uses of force, Mr. Puga endured	
22	severe pain and suffering, and lost his	
23	life and earning capacity. At all	
24	relevant times, the involved officers	
25	and deputies were acting under color of	
26	state law and in the course and scope of	
27	their employment with the State of	
28	California and County of San	
	Bernardino, respectively.”	
	Clarke Decl. ¶ 5, Ex. P – Ubaldo Tort	
	Claim	
	209. The tort claim from I.H. alleges	<u>Objection.</u> Compound.
	on “February 17, 2021, at	<u>Undisputed.</u>
	approximately 1:42 a.m., California	
	Highway Patrol officers and County of	
	San Bernardino sheriff's deputies	
	encountered Mr. Puga on a street in	
	Hesperia, California. In a populated,	
	residential area, officers and deputies	
	fired approximately 31 shots at Mr.	

<p>1 Moving Party’s (County) 2 Uncontroverted Facts and 3 Supporting Evidence</p>	<p>Opposing Party’s Response to Cited Fact and Supporting Evidence</p>
<p>4 Puga, thereby using excessive force 5 against him. The shots struck three 6 innocent bystanders and fatally 7 wounded Mr. Puga. At the time of the 8 shooting and other undiscovered uses 9 of force, Mr. Puga did not pose an 10 immediate threat of death or serious 11 bodily injury to any person. After the 12 shooting, the involved officers and 13 deputies failed to timely summon 14 medical attention for or provide 15 medical aid to Mr. Puga, thereby 16 further contributing to the injuries and 17 death. As a result of the shooting and 18 other uses of force, Mr. Puga endured 19 severe pain and suffering, and lost his 20 life and earning capacity. At all 21 relevant times, the involved officers 22 and deputies were acting under color of 23 state law and in the course and scope of 24 their employment with the State of 25 California and County of San 26 Bernardino, respectively.” 27 28 Clarke Decl. ¶ 6, Ex. Q – I.H. Tort Claim</p>	
<p>210. The tort claim from A.L. alleges on “February 17, 2021, at approximately 1:42 a.m., California Highway Patrol officers and County of San Bernardino sheriff’s deputies encountered Mr. Puga on a street in Hesperia, California. In a populated, residential area, officers and deputies fired approximately 31 shots at Mr. Puga, thereby using excessive force against him. The shots struck three innocent bystanders and fatally</p>	<p><u>Objection.</u> Compound. <u>Undisputed.</u></p>

<p>1 Moving Party's (County)</p> <p>2 Uncontroverted Facts and</p> <p>3 Supporting Evidence</p>	<p>Opposing Party's Response to Cited</p> <p>Fact and Supporting Evidence</p>
<p>4 wounded Mr. Puga. At the time of the</p> <p>5 shooting and other undiscovered uses</p> <p>6 of force, Mr. Puga did not pose an</p> <p>7 immediate threat of death or serious</p> <p>8 bodily injury to any person. After the</p> <p>9 shooting, the involved officers and</p> <p>10 deputies failed to timely</p> <p>11 summon medical attention for or</p> <p>12 provide medical aid to Mr. Puga,</p> <p>13 thereby further contributing to the</p> <p>14 injuries and death. As a result of the</p> <p>15 shooting and other uses of force, Mr.</p> <p>16 Puga endured severe pain and</p> <p>17 suffering, and lost his life and earning</p> <p>18 capacity. At all relevant times, the</p> <p>19 involved officers and deputies were</p> <p>20 acting under color of state law and in</p> <p>21 the course and scope of their</p> <p>22 employment with the State of</p> <p>23 California and County of San</p> <p>24 Bernardino, respectively.”</p> <p>25 Clarke Decl. ¶ 7, Ex. R – A.L. Tort</p> <p>26 Claim</p>	
<p>21 212. Pepper balls are not mentioned in</p> <p>22 any of the tort claims.</p> <p>23 See Clarke Decl. ¶ 4, Ex. O – Estate of</p> <p>24 Puga Tort Claim; Clarke Decl. ¶ 5, Ex.</p> <p>25 P – Ubaldo Tort Claim; Clarke Decl. ¶</p> <p>26 6, Ex. Q – I.H. Tort Claim; Clarke</p> <p>27 Decl. ¶ 7, Ex. R – A.L. Tort Claim;</p> <p>28 Clarke Decl. ¶ 8, Ex. S – L.C. Tort</p> <p>Claim</p>	<p><u>Undisputed</u> to the extent that pepper</p> <p>balls are not specifically mentioned in</p> <p>any of the tort claims. <u>Disputed</u> that</p> <p>pepper balls are not included as “other</p> <p>undiscovered uses of force” in</p> <p>Plaintiffs’ Government Tort Claims.</p> <p><i>See</i> Ex. O to Clarke Decl., Estate of</p> <p>Puga Tort Claim at bates stamp 00224;</p> <p>Ex. P to Clark Decl., Ubaldo Tort</p> <p>Claim at bate stamp 00230; Ex. Q to</p> <p>Clark Decl., I.H. Tort Claim at bates</p> <p>stamp 237; Ex. R to Clark Decl., A.L.</p> <p>Tort Claim at bates stamp 00243; Ex. S</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	to Clarke Decl., L.C. Tort Claim at bates stamp 249.
<p>213. Tasers are not mentioned in any of the tort claims.</p> <p>See Clarke Decl. ¶ 4, Ex. O – Estate of Puga Tort Claim; Clarke Decl. ¶ 5, Ex. P – Ubaldo Tort Claim; Clarke Decl. ¶ 6, Ex. Q – I.H. Tort Claim; Clarke Decl. ¶ 7, Ex. R – A.L. Tort Claim; Clarke Decl. ¶ 8, Ex. S – L.C. Tort Claim</p>	<p><u>Undisputed</u> to the extent that Tasers are not specifically mentioned in any of the tort claims. <u>Disputed</u> that Tasers are not included as “other undiscovered uses of force” in Plaintiffs’ Government Tort Claims.</p> <p>See Ex. O to Clarke Decl., Estate of Puga Tort Claim at bates stamp 00224; Ex. P to Clark Decl., Ubaldo Tort Claim at bate stamp 00230; Ex. Q to Clark Decl., I.H. Tort Claim at bates stamp 237; Ex. R to Clark Decl., A.L. Tort Claim at bates stamp 00243; Ex. S to Clarke Decl., L.C. Tort Claim at bates stamp 249.</p>
<p>214. Neighbor Tammy Goodson saw Puga withdraw a gun from his waistband.</p> <p>Clarke ¶ 19, Ex. BB – Goodson Depo. 26:10-17</p>	<p><u>Objection.</u> Vague as to time.</p> <p><u>Disputed.</u></p> <p>As soon as Puga turned to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p>

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.
4		Puga never had a gun in his hand.
5		Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.
6		None of the videos capturing the incident show Puga with a gun in his hand.
7		Ex. 1 to Le Decl., Kee Dep. 7:16-18; Ex. 5 to Le Decl., Vaccari Dep. 9:15-18.
8		Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.
9		Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.
10		There were no bullet impacts or casings found near the area of the initial shooting that would support the allegation that Mr. Puga fired a weapon at anyone.
11		Clark Decl. ¶ 16a
12		
13		
14		
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21		
22	215. Neighbor Edward Mengerino testified he saw smoke coming from Puga's hand giving him the impression Puga had a gun.	<u>Objection.</u> Vague as to time.
23		<u>Disputed.</u>
24		As soon as Puga turned to run, officers shot at Puga.
25	Clarke ¶ 20, Ex. CC – Edward Mangerino Depo. 35:2-36:3	Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone
26		
27		
28		

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		Video at 0:00:51-00:54; Ex. 13 to Le
4		Decl., Gonzalez Cellphone Video at
5		0:06:24-06:31.
6		Puga never grabbed or aggressively
7		reached for anything prior to the shots.
8		Ex. 8 to Le Decl., Gonzalez Dep. 16:1-
9		3; Ex. 14 to Le Decl., Botten Dep.
10		129:13-25, 130:6-12.
11		Puga never had a gun in his hand.
12		Ex. 8 to Le Decl., Gonzalez Dep.
13		97:16-25, 83:21-24; Ex. 14 to Le Decl.,
14		Botten Dep. 129:13-25, 130:6-12.
15		Puga never pointed his hand or a
16		weapon in any specific direction or at
17		any officer.
18		Ex. 5 to Le Decl., Vaccari Dep. 64:8-
19		17; Ex. 8 to Le Decl., Gonzalez Dep.
20		97:1-6.
21		Puga never fired a weapon at any
22		officer.
23		Ex. 7 to Le Decl., Mangerino Dep.
24		37:14-16; Ex. 8 to Le Decl., Gonzalez
25		Dep. 132:22-24; Ex. 14 to Le Decl.,
26		Botten Dep. 129:13-25, 130:6-12.
27		Neither smoke nor any muzzle flash
28		ever came from Puga.
		Ex. 3 to Le Decl., Blackwood Dep.
		20:10-12; Ex. 4 to Le Decl., Adams
		Dep. 36:12-18; Ex. 5 to Le Decl.,
		Vaccari Dep. 48:14-20; Ex. 8 to Le
		Decl., Gonzalez Dep. 99:8-25.
		None of the videos capturing the
		incident show Puga with a gun in his
		hand.
		Ex. 1 to Le Decl., Kee Dep. 7:16-18;
		Ex. 5 to Le Decl., Vaccari Dep. 9:15-
		18.

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		None of the videos capturing the
4		incident show Puga ever pointing a gun
5		at anyone.
6		Ex. 1 to Le Decl., Kee Dep. 7:22-24;
7		Ex. 5 to Le Decl., Vaccari Dep. 9:19-
8		21.
9		None of the videos capturing the
10		incident show Puga ever firing a gun.
11		Ex. 1 to Le Decl., Kee Dep. 7:19-21.
12		None of the videos capturing the
13		incident show any muzzle flash coming
14		from the area Puga was at.
15		Ex. 1 to Le Decl., Kee Dep. 92:14-16;
16		Ex. 2 to Le Decl., Rubalcava Dep.
17		93:17-19
18		Gonzalez saw Puga's waistband when
19		he turned to take off running and never
20		saw a gun in his waistband.
21		Ex. 8 to Le Decl., Gonzalez Dep.
22		95:15-25, 115:18-21.
23		There were no bullet impacts or
24		casings found near the area of the
25		initial shooting that would support the
26		allegation that Mr. Puga fired a weapon
27		at anyone.
28		Clark Decl. ¶ 16a
23	216. Sergeant Kee saw Puga withdraw	<u>Objection.</u> Vague as to time.
24	the firearm.	<u>Disputed.</u>
25	Clarke Decl. ¶ 11, Ex. V Kee Depo.	As soon as Puga turned to run, officers
26	82:14-24;	shot at Puga.
27		Ex. 2 to Le Decl., Rubalcava Dep.
28		60:20-61:1; Ex. 5 to Le Decl., Vaccari
		Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le
		Decl., Mangerino Dep. 34:3-9, 36:15-

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		17, 37:11-13; Gonzalez Dep. 42:25-
4		43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10
5		to Le Decl., Mangerino Cellphone
6		Video at 0:00:51-00:54; Ex. 13 to Le
7		Decl., Gonzalez Cellphone Video at
8		0:06:24-06:31.
9		Puga never grabbed or aggressively
10		reached for anything prior to the shots.
11		Ex. 8 to Le Decl., Gonzalez Dep. 16:1-
12		3; Ex. 14 to Le Decl., Botten Dep.
13		129:13-25, 130:6-12.
14		Puga never had a gun in his hand.
15		Ex. 8 to Le Decl., Gonzalez Dep.
16		97:16-25, 83:21-24; Ex. 14 to Le Decl.,
17		Botten Dep. 129:13-25, 130:6-12.
18		None of the videos capturing the
19		incident show Puga with a gun in his
20		hand.
21		Ex. 1 to Le Decl., Kee Dep. 7:16-18;
22		Ex. 5 to Le Decl., Vaccari Dep. 9:15-
23		18.
24		Gonzalez saw Puga's waistband when
25		he turned to take off running and never
26		saw a gun in his waistband.
27		Ex. 8 to Le Decl., Gonzalez Dep.
28		95:15-25, 115:18-21.
		Kee claims that as he approached the
		electrical pole, he could only see a
		portion of Puga's body in front of the
		vehicle.
		Ex. 1 to Le Decl., Kee Dep. 29:20-23.
		Kee claims he could not see Puga's
		waistband while Puga was standing in
		front of the vehicle.

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		Ex. 1 to Le Decl., Kee Dep. 81:6-19.
4		There was an electrical pole on the
5		southwest corner of the intersection
6		that was almost parallel to the front of
7		the Expedition.
8		Ex. 1 to Le Decl., Kee Dep. 26:22-
9		27:9; Ex. 15 to Le Decl., Photograph of
10		Scene.
11		In the Erin Mangerino cellphone video
12		of the incident, moments before the
13		shooting, two figures can be seen
14		standing without cover in the street,
15		partially obscured by the utility pole
16		before backing away in a southern
17		direction, away from the utility pole,
18		and out of frame.
19		Ex. 10 to Le Decl., E. Mangerino
20		Cellphone Video at 0:00:29-00:53.
21		Erin Mangerino was unable to see any
22		officers standing on her side of Peach
23		Street.
24		Ex. 7 to Le Decl., Mangerino Dep.
25		53:11-22.
26	217. Sergeant Vaccari saw Puga	<u>Objection.</u> Vague as to time.
27	withdraw the firearm.	<u>Disputed.</u>
28	Clarke Decl. ¶ 10, Ex. U – Vaccari	As soon as Puga turned to run, officers
	Depo. 64:4-12	shot at Puga.
		Ex. 2 to Le Decl., Rubalcava Dep.
		60:20-61:1; Ex. 5 to Le Decl., Vaccari
		Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le
		Decl., Mangerino Dep. 34:3-9, 36:15-
		17, 37:11-13; Gonzalez Dep. 42:25-

1	Moving Party's (County)	Opposing Party's Response to Cited
2	Uncontroverted Facts and	Fact and Supporting Evidence
3		43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10
4		to Le Decl., Mangerino Cellphone
5		Video at 0:00:51-00:54; Ex. 13 to Le
6		Decl., Gonzalez Cellphone Video at
7		0:06:24-06:31.
8		Puga never grabbed or aggressively
9		reached for anything prior to the shots.
10		Ex. 8 to Le Decl., Gonzalez Dep. 16:1-
11		3; Ex. 14 to Le Decl., Botten Dep.
12		129:13-25, 130:6-12.
13		Puga never had a gun in his hand.
14		Ex. 8 to Le Decl., Gonzalez Dep.
15		97:16-25, 83:21-24; Ex. 14 to Le Decl.,
16		Botten Dep. 129:13-25, 130:6-12.
17		None of the videos capturing the
18		incident show Puga with a gun in his
19		hand.
20		Ex. 1 to Le Decl., Kee Dep. 7:16-18;
21		Ex. 5 to Le Decl., Vaccari Dep. 9:15-
22		18.
23		Gonzalez saw Puga's waistband when
24		he turned to take off running and never
25		saw a gun in his waistband.
26		Ex. 8 to Le Decl., Gonzalez Dep.
27		95:15-25, 115:18-21.
28		When Adams approached the vehicle,
		Puga was standing in the front close to
		the driver's side headlight and Adams
		could only see Puga from chest up.
		Ex. 4 to Le Decl., Adams Dep. 40:16-
		22, 41:2-12, 45:11-16.
		The passenger door of the Expedition
		was still open when Adams and
		Vaccari approached from the passenger
		side.

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 4 to Le Decl., Adams Dep. 73:2-6; Ex. 12 to Le Decl., Kee MVARs Part 2 at 46:42-46:49.</p> <p>Adams and Vaccari had only reached the part where the painted curb meets the unpainted curb when the shots started, which is near the rear door of the Expedition.</p> <p>Ex. 4 to Le Decl., Adams Dep. 76:1-19; Ex. 12 to Le Decl., Kee MVARs Part 2 at 46:46-46:49; Ex. 16 to Le Decl., Photograph of Expedition at Curb.</p>
<p>218. Officer Rubalcava saw Puga withdraw a firearm.</p> <p>Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 79:11-13</p>	<p><u>Objection.</u> Vague as to time.</p> <p><u>Disputed.</u></p> <p>As soon as Puga turned to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never had a gun in his hand.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>None of the videos capturing the incident show Puga with a gun in his hand.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:16-18; Ex. 5 to Le Decl., Vaccari Dep. 9:15-18.</p> <p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p>
<p>219. Officer Blackwood saw Puga had a firearm in his hand.</p> <p>Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 53:14-16</p>	<p><u>Objection.</u> Vague as to time.</p> <p><u>Disputed.</u></p> <p>As soon as Puga turned to run, officers shot at Puga.</p> <p>Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.</p> <p>Puga never grabbed or aggressively reached for anything prior to the shots.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p> <p>Puga never had a gun in his hand.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 97:16-25, 83:21-24; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
	<p>None of the videos capturing the incident show Puga with a gun in his hand.</p> <p>Ex. 1 to Le Decl., Kee Dep. 7:16-18; Ex. 5 to Le Decl., Vaccari Dep. 9:15-18.</p> <p>Gonzalez saw Puga's waistband when he turned to take off running and never saw a gun in his waistband.</p> <p>Ex. 8 to Le Decl., Gonzalez Dep. 95:15-25, 115:18-21.</p> <p>Blackwood was trying to assess while he was firing by looking for a gun but could not see Puga's hands and therefore never saw Puga with a gun while Puga was running away.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 24:10-13, 30:23-31:11, 45:23-46:2.</p> <p>During the time Blackwood was shooting at Puga, Blackwood could not see Puga's hands.</p> <p>Ex. 3 to Le Decl., Blackwood Dep. 36:18-20.</p>
<p>220. Plaintiffs never set forth any claims about the use of pepper balls and/or tasers nor did they set forth that any pre-shooting tactics were the basis of their claims.</p> <p>Clarke Decl. ¶ 2, Ex. M – TAC</p>	<p><u>Disputed.</u></p> <p>Plaintiffs alleged “negligent tactics and handling of the situation with DECEDENT, including pre-shooting negligence (TAC, Doc. No. 68 ¶ 107(b)) and “negligent use of force, including deadly force, against DECEDENT” (TAC, Doc. No. 68 ¶ 107(c)).</p>

Moving Party's (County) Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>221. Plaintiffs state in ¶ 47 of the TAC “On information and belief, DECEDENT did not pose an immediate threat of serious bodily injury or death to anyone at the time of the shooting. OFFICER DEFENDANTS and DEPUTY DEFENDANTS were not faced with an immediate or imminent defense of life situation and had less than lethal alternatives available to subdue DECEDENT and to take DECEDENT into custody.”</p> <p>Clarke ¶ 2, Ex. M – TAC (Dkt. 68)</p>	<p><u>Undisputed.</u></p>
<p>222. Plaintiffs state in ¶ 106 of the TAC “Police officers, including Defendants, have a duty to use reasonable care to prevent harm or injury to others. This duty includes using appropriate tactics, giving appropriate commands, giving warnings, and not using any force unless necessary, using less than lethal options, and only using deadly force as a last resort.”</p> <p>Clarke ¶ 2, Ex. M – TAC (Dkt. 68)</p>	<p><u>Undisputed.</u></p>
<p>223. The TAC sets forth that deputies should have utilized less lethal alternatives to take Puga into custody.</p> <p>Clarke ¶ 2, Ex. M – TAC ¶¶ 47, 106 (Dkt. 68).</p>	<p><u>Objection.</u> Vague as to time.</p> <p>Paragraph 47 of the TAC specifically states that the deputies should have utilized less-lethal alternatives to take Puga into custody <i>at the time of the shooting.</i></p>

PLAINTIFFS' ADDITIONAL MATERIAL FACTS

Plaintiffs' Additional Material Facts	Supporting Evidence
224. On February 17, 2021, CHP officers Bernardo Rubalcava and Michael Blackwood initiated a pursuit of a white Expedition due to it matching the description of a vehicle that had been involved in a prior freeway shooting.	Ex. 1 to Le Decl., Kee Dep. 14:6-9, 75:3-17; Ex. 3 to Le Decl., Blackwood Dep. 51:3-10.
225. CHP Sergeant Isaiah Kee also joined the pursuit.	Ex. 1 to Le Decl., Kee Dep. 75:13-17.
226. San Bernardino County Sheriff's Department received a call from dispatch requesting assistance with the pursuit.	Ex. 5 to Le Decl., Vaccari Dep. 18:23-19:3.
227. SBSD Sergeant Robert Vaccari and Deputy Jake Adams joined the pursuit to assist.	Ex. 4 to Le Decl., Adams Dep. 9:12-13; Ex. 5 to Le Decl., Vaccari Dep. 18:17-19:3.
228. CHP requested that SBSD take over the pursuit but Vaccari declined because he did not know the details of the alleged crime and did not know what CHP's policies and procedures were for trading or taking over a pursuit and did not want CHP to drop out of the pursuit in the event he agreed to take over.	Ex. 6 to Le Decl., Vaccari Int. 12:22-13:3.
229. There was little to no traffic on the road and no passing pedestrians during the pursuit.	See Ex. D to Esquivel Decl., Blackwood MVARs, Part 1; Ex. E to Esquivel Decl., Blackwood MVARs, Part 2.
230. The white Expedition never targeted any of the officers nor	See Ex. D to Esquivel Decl., Blackwood MVARs, Part 1; Ex. E to Esquivel Decl., Blackwood MVARs, Part 2.

1	forced other vehicles off the road	
2	during the pursuit.	
3	231. The white Expedition's speed	Ex. 6 to Le Decl., Vaccari Int. 13:22-
4	during the pursuit was fast but not	24; Ex. 4 to Le Decl., Adams Dep.
5	outrageous as even on the freeway,	12:3-13.
6	the Expedition was only going 80	
7	miles per hour.	
8	232. At some point during the pursuit,	Ex. 6 to Le Decl., Vaccari Int. 15:6-11.
9	Vaccari requested SBSB's police	
10	helicopter to join the pursuit and the	
11	helicopter did join the pursuit.	
12	233. As the pursuit continued down	Ex. 6 to Le Decl., Vaccari Int. 16:6-8.
13	the dirt road, the Expedition's	
14	driving was not erratic.	
15	234. The officers did not see any	Ex. 1 to Le Decl., Kee Dep. 16:16-18;
16	weapon in the white Expedition	Ex. 4 to Le Decl., Adams Dep. 12:14-
17	during the pursuit.	17.
18	235. Spike strips were successfully	Ex. F to Esquivel Decl. at 8:25; Ex. 6
19	deployed on the Expedition around	to Le Decl., Vaccari Int. 17:2-3.
20	Main Street.	
21	236. The Expedition then turned north	Ex. F to Esquivel Decl. at 8:25-9:12;
22	onto Peach and slowed down	Ex. 6 to Le Decl., Vaccari Int. 17:4-6,
23	significantly, traveling	17:15-19; Ex. 1 to Le Decl., Kee Dep.
24	approximately 5 to 10 miles per	16:22-24.
25	hour before coming to a stop at the	
26	intersection of Peach and Catalpa.	
27	237. The helicopter continued to orbit	Ex. 1 to Le Decl., Kee Dep. 28:7-15;
28	overhead for approximately 30	Ex. 3 to Le Decl., Blackwood Dep.
	minutes, illuminating the middle of	59:23-61:1.
	the intersection where the two	
	streets cross and the four homes on	
	the corners.	
	238. The house on the northeast	Ex. C to Esquivel Decl., 12:56-13:13,
	corner, ("Botten Residence") had its	13:41-13:46, 14:15-14:25; Ex. 7 to Le
	porch light on and the helicopter's	Decl., Mangerino Dep. 56:1-10.

1	spotlight would occasionally	
2	illuminate the entire house while it	
3	orbited overhead.	
4	239. There was also a streetlight on	Ex. 2 to Le Decl., Rubalcava Dep.
5	the corner of Peach and Catalpa as	37:8-15; Ex. 7 to Le Decl., Mangerino
6	well as the patrol vehicle's	Dep. 40:17-41:6.
7	spotlights and red and blue lights	
8	illuminating the area.	
9	240. At the time of the incident, the	Ex. 1 to Le Decl., Kee Dep. 18:10-12;
10	officers were aware they had	Ex. 2 to Le Decl., Rubalcava Dep.
11	stopped in a residential	20:13-16; Ex. 4 to Le Decl., Adams
12	neighborhood.	Dep. 44:12-18; Ex. 5 to Le Decl.,
13		Vaccari Dep. 37:17-22.
14	241. At the time of the incident,	Ex. 3 to Le Decl., Blackwood Dep.
15	Blackwood, Adams, and Vaccari	59:23-61:1; Ex. 4 to Le Decl., Adams
16	were aware that there were houses	Dep. 44:12-18; Ex. 5 to Le Decl.,
17	on each of the four corners of the	Vaccari Dep. 37:17-22.
18	intersection.	
19	242. Kee never considered evacuating	Ex. 1 to Le Decl., Kee Dep. 61:14-24.
20	the people in the nearby homes nor	
21	did he ever discuss it with the SBSB	
22	deputies.	
23	243. Vaccari never considering	Ex. 5 to Le Decl., Vaccari Dep. 37:17-
24	alerting the nearby residences of	38:6.
25	potential harm or evacuating the	
26	people in the homes on the four	
27	corners of the intersection.	
28	244. At some point, a female exited	Ex. 4 to Le Decl., Adams Dep. 13:4-25
	the vehicle and was taken into	
	custody, after which she informed	
	Adams that the driver, later	
	identified as Hector Puga, of his	
	first name and that he was a new	
	father and wanted to call his wife.	

1	245. The officers had never seen Puga before and did not have any specific knowledge regarding Puga's criminal history.	Ex. 2 to Le Decl., Rubalcava Dep. 32:2-6; Ex. 4 to Le Decl., Adams Dep. 14:6-13.
2		
3		
4	246. The officers also did not have any specific information that Puga had injured anyone.	Ex. 2 to Le Decl., Rubalcava Dep. 31:18-32:1; Ex. 3 to Le Decl., Blackwood Dep. 16:8-10.
5		
6		
7	247. The officers did not have any specific information as to whether Puga was under the influence of drugs or alcohol.	Ex. 2 to Le Decl., Rubalcava Dep. 32:7-9.
8		
9		
10	248. For a period of time, the officers attempted to get Puga out of the vehicle but he was not coming out.	Ex. 1 to Le Decl., Kee Dep. 19:10-13.
11		
12		
13	249. At some point, Kee considered calling in the SWAT Team and spoke to Vaccari about it.	Ex. 1 to Le Decl., Kee Dep. 19:17-20:2.
14		
15	250. Kee made the request because from his experience, SWAT sometimes comes out for barricaded suspects.	Ex. 1 to Le Decl., Kee Dep. 20:12-17.
16		
17		
18	251. Kee was told that SWAT would not come out for something of this nature.	Ex. 1 to Le Decl., Kee Dep. 20:3-6.
19		
20		
21	252. Kee saw Vaccari go back to his car and get on a cell phone but does not know whether Vaccari actually called to inquire about SWAT.	Ex. 1 to Le Decl., Kee Dep. 20:7-11.
22		
23		
24	253. Vaccari did not have his cell phone to call SWAT and claims he told Kee this.	Ex. 5 to Le Decl., Vaccari Dep. 26:8-14.
25		
26		
27	254. Vaccari had forgotten his cell phone at the station.	Ex. 6 to Le Decl., Vaccari Int. 20:1-6.
28		

1	255. Vaccari has dealt with	Ex. 5 to Le Decl., Vaccari Dep. 12:14-
2	barricaded suspects in homes before	15.
3	and has called SWAT to come assist	
4	with those suspects.	
5	256. When SWAT is called, they	Ex. 5 to Le Decl., Vaccari Dep. 13:5-
6	would sometimes give suggestions	13.
7	or advice and other times they	
8	would come out.	
9	257. There were also times when	Ex. 5 to Le Decl., Vaccari Dep. 13:14-
10	SWAT would give suggestions or	17.
11	advice and when Vaccari	
12	recontacted them, SWAT would	
13	come out.	
14	258. Vaccari does not know what	Ex. 5 to Le Decl., Vaccari Dep. 13:18-
15	SWAT's criteria was in order for	23.
16	them to come out for a barricaded	
17	suspect.	
18	259. If SWAT had responded, Kee	Ex. 1 to Le Decl., Kee Dep. 48:12-21.
19	would have let them handle the	
20	situation.	
21	260. The officers never developed a	Ex. 4 to Le Decl., Adams Dep. 19:10-
22	tactical plan.	21; Ex. 5 to Le Decl., 36:20-25.
23	261. At some point, a decision was	Ex. 1 to Le Decl., Kee Dep. 20:18-21.
24	made that pepper balls would be	
25	helpful in trying to get Puga to come	
26	out.	
27	262. Kee attempted to break the car's	Ex. 1 to Le Decl., Kee Dep. 20:22-
28	window with a beanbag shotgun to	21:11.
	facilitate getting the pepper balls	
	into the car but was unsuccessful.	
	263. Vaccari then successfully used	Ex. 1 to Le Decl., Kee Dep. 21:12-22;
	glass break balls to break open the	Ex. 5 to Le Decl., Vaccari Dep. 29:17-
	back window.	30:9.

1	264. Kee then directed Vaccari to	Ex. 1 to Le Decl., Kee Dep. 21:23-
2	deploy pepper balls.	22:6.
3	265. Approximately 120 to 150	Ex. 4 to Le Decl., Adams Dep. 16:3-7;
4	pepper balls were deployed into the	Ex. 5 to Le Decl., Vaccari Dep. 30:22-
5	Expedition over a period of 30 to 45	24, 31:19-21.
6	minutes.	
7	266. Adams observed Puga twisting	Ex. 4 to Le Decl., Adams Dep. 16:17-
8	and turning his body, reaching	22.
9	around, leaning over, and reaching	
10	back at different periods of time	
11	while Puga was inside the vehicle.	
12	267. Puga reacted to the pepper balls	Ex. 4 to Le Decl., Adams Dep. 18:10-
13	by coughing and complaining that	13; Ex. 8 to Le Decl., Gonzalez Dep.
14	his eyes were burning and that he	93:10-15.
15	could not see.	
16	268. After deploying the pepper balls	Ex. 6 to Le Decl., Vaccari Int. 27:26-
17	for approximately 30 minutes,	28:3.
18	Vaccari thought about contacting	
19	SWAT by having Dispatch send	
20	their phone number to his screen	
21	and using someone else's phone.	
22	269. Vaccari then made the decision	Ex. 6 to Le Decl., Vaccari Int. 28:11-
23	to intentionally hit Puga with pepper	20.
24	balls to try to motivate Puga with	
25	pain to come out.	
26	270. When Vaccari was deploying the	Ex. 6 to Le Decl., Vaccari Int. 28:20-
27	pepper balls, he observed that Puga	23.
28	would get his head down low in the	
	window.	
	271. Vaccari deployed pepper balls	Ex. 1 to Le Decl., Kee Dep. 23:2-10;
	and struck Puga in the right eye,	Ex. 3 to Le Decl., Blackwood Dep.
	which is extremely painful.	14:24-15:6; Ex. 5 to Le Decl., Vaccari
		Dep. 32:14-18; Ex. 6 to Le Decl.,
		Vaccari Int. 28:25-29:4; Ex. 7 to Le
		Decl., Mangerino Dep. 25:23-26:1.

1	272. Puga sustained a cut to the area	Ex. 3 to Le Decl., Blackwood Dep.
2	of his forehead right above his right	13:24-14:10.
3	eye, which Blackwood associated	
4	with being hit in the right eye by	
	pepper balls.	
5	273. Puga eventually exited the	Ex. 1 to Le Decl., Kee Dep. 23:14-19.
6	vehicle from the driver's side.	
7	274. The officers were treating Puga	Ex. 5 to Le Decl., Vaccari Dep. 34:2-6.
8	as if he had a firearm when Puga	
9	exited the vehicle.	
10	275. Puga did not have a shirt on	Ex. 1 to Le Decl., Kee Dep. 23:18-22.
	when he exited the vehicle.	
11	276. Puga did not appear to have a	Ex. 1 to Le Decl., Kee Dep. 24:15-17;
12	gun or weapon in his hand,	Ex. 2 to Le Decl., Rubalcava Dep.
13	waistband, or pocket when he exited	37:25-38:4; Ex. 3 to Le Decl.,
14	the vehicle.	Blackwood Dep. 34:4-6; Ex. 8 to Le
		Decl., Gonzalez Dep. 95:15-25; Ex. 9
		to Le Decl., Edward Mangerino Video;
		Clark Decl. ¶ 15.
15	277. Puga stood near the driver's side	Ex. 1 to Le Decl., Kee Dep. 23:23-
16	of the car for a period of time and	24:3.
17	during that time, the officers were	
18	able to see Puga's hands.	
19	278. Puga's hands were raised for the	Ex. 1 to Le Decl., Kee Dep. 24:3-6; Ex.
20	majority of the time he was	3 to Le Decl., Blackwood Dep. 15:7-
21	positioned near the driver's side of	12; Ex. 5 to Le Decl., Vaccari Dep.
	the vehicle.	34:7-9.
22	279. Puga did not have anything in	Ex. 1 to Le Decl., Kee Dep. 24:7-9; Ex.
23	his hands and he never reached for	2 to Le Decl., 38:8-20 Ex. 3 to Le
24	any weapon while he was standing	Decl., Blackwood Dep. 15:25-16:2.
	near the driver's side of the vehicle.	
25	280. Puga did not appear to have a	Ex. 3 to Le Decl., Blackwood Dep.
26	weapon in his hands or on his	33:25-34:3; Ex. 4 to Le Decl., Adams
27	person while he stood next to the	Dep. 21:22-22:2.
28	driver's side of the vehicle.	

1	281. The officers never formulated a tactical plan for what to do once Puga exited the vehicle.	Ex. 1 to Le Decl., Kee Dep. 24:21-25 Ex. 3 to Le Decl., Blackwood Dep. 19:16-22, 31:19-23.
2		
3	282. While Puga was standing at the driver's side of the vehicle, there was no discussion about a tactical plan.	Ex. 4 to Le Decl., Adams Dep. 22:9-12.
4		
5	283. Kee did not assign any CHP officer to be less-lethal nor did he know whether any sheriff's deputy had been assigned less-lethal	Ex. 1 to Le Decl., Kee Dep. 25:1-6.
6		
7	284. Puga had on a baggy pair of jeans when he exited the vehicle.	Ex. 1 to Le Decl., Kee Dep. 11:4-14.
8		
9	285. While Puga was positioned next to the driver's side of the vehicle, Puga would at times raise his hands and then lower them back down.	Ex. 4 to Le Decl., Adams Dep. 21:2-8.
10		
11	286. Puga was continually reaching down to pull up his pants because they were loose and kept falling.	Ex. 1 to Le Decl., Kee Dep. 11:15-23; Ex. 4 to Le Decl., Adams Dep. 42:12-17, 43:5-13, 43:23-44:5; Ex. 8 to Le Decl., Gonzalez Dep. 105:11-25.
12		
13	287. Puga expressed concerns to the officers that he thought the officers were going to shoot him.	Ex. 1 to Le Decl., Kee Dep. 52:2-5; Ex. 5 to Le Decl., Vaccari Dep. 34:22-35:4; Ex. 2 to Le Decl., Rubalcava Dep. 39:7-9; Ex. 8 to Le Decl., Gonzalez Dep. 40:23-41:11.
14		
15	288. Puga sounded scared of being shot by police.	Ex. 8 to Le Decl., Gonzalez Dep. 103:13-23.
16		
17	289. Puga said something about hearing a click and being afraid that somebody was getting ready to shoot him.	Ex. 1 to Le Decl., Kee Dep. 52:9-11.
18		
19	290. Puga then walked to the front of the white Expedition.	Ex. 8 to Le Decl., Gonzalez Dep. 42:21-25; Ex. 11 to Le Decl., Blackwood MVARs Part 4 at 37:48-37:50.
20		
21		
22		
23		
24		
25		
26		
27		
28		

1	291. After Puga went to the front of	Ex. 4 to Le Decl., Adams Dep. 25:2-
2	the vehicle, the officers still did not	11.
3	have any discussion regarding a	
4	tactical plan.	
5	292. Puga had his hands up while he	Ex. 2 to Le Decl., Rubalcava Dep.
6	was positioned near the front of the	40:3-5.
7	Expedition.	
8	293. When Puga was in front of the	Ex. 2 to Le Decl., Rubalcava Dep.
9	Expedition, Puga did not have	40:6-8.
10	anything in his.	
11	294. Puga occasionally would drop	Ex. 4 to Le Decl., Adams Dep. 61:3-
12	his hands to pull up his pants while	62:3; Ex. 8 to Le Decl., Gonzalez Dep.
13	he was standing near the front of the	42:18-25.
14	vehicle.	
15	295. The bystander cell phone video	Ex. 10 to Le Decl., E. Mangerino
16	taken by Erin Mangerino shows	Cellphone Video at 0:00:03-00:07;
17	Puga with his hands up and briefly	0:00:20-00:27.
18	dropping his right hand to his	
19	waistband to adjust his pants before	
20	raising his hand up again, twice,	
21	before the shooting.	
22	296. At some point, Kee and	Ex. 1 to Le Decl., Kee Dep. 25:17-18;
23	Rubalcava decided to approach	Ex. 2 to Le Decl., Rubalcava Dep.
24	Puga to take him into custody.	40:12-22.
25	297. Kee and Rubalcava did not	Ex. 1 to Le Decl., Kee Dep. 28:16-19;
26	coordinate with the SBS D Sheriffs'	Ex. 2 to Le Decl., Rubalcava Dep.
27	deputies regarding any plan to	40:23-25; Ex. 5 to Le Decl., Vaccari
28	approach and take Puga into	Dep. 36:16-19.
	custody.	
	298. As Kee and Rubalcava were	Ex. 2 to Le Decl., Rubalcava Dep.
	approaching Puga, they did not have	41:14-16.
	any cover.	

1	299. Kee and Rubalcava were not	Ex. 1 to Le Decl., Kee Dep. 28:20-22;
2	aware that Vaccari and Adams were	Ex. 2 to Le Decl., Rubalcava Dep.
3	also approaching Puga.	41:8-11.
4	300. Vaccari was still treating Puga as	Ex. 5 to Le Decl., Vaccari Dep. 36:12-
5	if he was armed with a weapon	15
6	while Puga was standing near the	
7	front of the vehicle.	
8	301. When Vaccari and Adams saw	Ex. 4 to Le Decl., Adams Dep. 26:21-
9	Kee and Rubalcava move towards	27:3; Ex. 5 to Le Decl., Vaccari Dep.
10	the shoulder of Peach Street, they	37:1-11, 38:7-12.
11	thought they were moving to just get	
12	a better view of Puga, not to	
13	approach Puga.	
14	302. Vaccari wanted to move up the	Ex. 5 to Le Decl., Vaccari Dep. 39:6-
15	passenger side of the vehicle to cut	20.
16	off an avenue of escape for Puga.	
17	303. The only cover Vaccari and	Ex. 5 to Le Decl., Vaccari Dep. 39:21-
18	Adams had when moving up was	25.
19	the passenger's side of Puga's	
20	vehicle.	
21	304. Prior to approaching, Vaccari	Ex. 5 to Le Decl., Vaccari Dep. 40:3-
22	and Adams had discussed the	16.
23	possibility of using the Taser on	
24	Puga because Puga was a good	
25	candidate for the Taser due to him	
26	being shirtless, but Vaccari	
27	ultimately decided to utilize the 40-	
28	mm less-lethal instead.	
	305. As Vaccari approached from the	Ex. 5 to Le Decl., Vaccari Dep. 41:14-
	dirt shoulder, he did not have any	24.
	cover.	
	306. There was an electrical pole on	See Ex. 15 to Le Decl., Photograph of
	the southwest corner of the	Scene; Ex. 16 to Le Decl., Photograph
	intersection that was parallel to the	of Expedition at Curb.

1	back passenger doors of the Expedition.	
2		
3	307. In the Erin Mangerino cellphone video of the incident, moments before the shooting, two figures can be seen standing without cover in the street, partially obscured by the utility pole before backing away in a southern direction, away from the utility pole, and out of frame.	Ex. 10 to Le Decl., E. Mangerino Cellphone Video at 0:00:29-00:53.
4		
5		
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8		
9	308. Erin Mangerino was unable to see any officers standing on her side of Peach Street.	Ex. 7 to Le Decl., Mangerino Dep. 53:11-22.
10		
11	309. Kee claims that as he approached the electrical pole, he could only see a portion of Puga's body in front of the vehicle.	Ex. 1 to Le Decl., Kee Dep. 29:20-23.
12		
13		
14		
15	310. Kee claims he could not see Puga's waistband while Puga was standing in front of the vehicle and could only see Puga's waistband once he moved past the front of Puga's vehicle.	Ex. 1 to Le Decl., Kee Dep. 81:6-19.
16		
17		
18		
19	311. As soon as Puga started to turn to run, officers shot at Puga.	Ex. 2 to Le Decl., Rubalcava Dep. 60:20-61:1; Ex. 5 to Le Decl., Vaccari Dep. 42:24-43:2, 47:5-14; Ex. 7 to Le Decl., Mangerino Dep. 34:3-9, 36:15-17, 37:11-13; Gonzalez Dep. 42:25-43:1, 55:1-4, 97:5-11, 97:12-15; Ex. 10 to Le Decl., Mangerino Cellphone Video at 0:00:51-00:54; Ex. 13 to Le Decl., Gonzalez Cellphone Video at 0:06:24-06:31.
20		
21		
22		
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24		
25	312. Puga never grabbed or aggressively reached for anything prior to the shots.	Ex. 8 to Le Decl., Gonzalez Dep. 16:1-3; Ex. 14 to Le Decl., Botten Dep. 129:13-25, 130:6-12.
26		
27		
28		

1	313. Puga never had a gun in his	Ex. 8 to Le Decl., Gonzalez Dep.
2	hand.	97:16-25, 83:21-24.
3	314. Puga never pointed his hand or a	Ex. 5 to Le Decl., Vaccari Dep. 64:8-
4	weapon in any specific direction or	17; Ex. 8 to Le Decl., Gonzalez Dep.
5	at any officer.	97:1-6.
6	315. Puga never fired a weapon at any	Ex. 7 to Le Decl., Mangerino Dep.
7	officer.	37:14-16; Ex. 8 to Le Decl., Gonzalez
8	316. Neither smoke nor any muzzle	Dep. 132:22-24.
9	flash ever came from Puga.	Ex. 3 to Le Decl., Blackwood Dep.
10	317. None of the videos capturing the	20:10-12; Ex. 4 to Le Decl., Adams
11	incident show Puga with a gun in	Dep. 36:12-18; Ex. 5 to Le Decl.,
12	his hand.	Vaccari Dep. 48:14-20; Ex. 8 to Le
13	318. None of the videos capturing the	Decl., Gonzalez Dep. 99:8-25.
14	incident show Puga pointing a gun	Ex. 1 to Le Decl., Kee Dep. 7:16-18;
15	at anyone.	Ex. 5 to Le Decl., Vaccari Dep. 9:15-
16	319. None of the videos capturing the	18.
17	incident show Puga firing a gun.	Ex. 1 to Le Decl., Kee Dep. 7:22-24;
18	320. None of the videos capturing the	Ex. 5 to Le Decl., Vaccari Dep. 9:19-
19	incident show any muzzle flash	21.
20	coming from the area Puga was.	Ex. 1 to Le Decl., Kee Dep. 7:19-21.
21	321. As Puga was running, he never	Ex. 1 to Le Decl., Kee Dep. 92:14-16;
22	turned around to look at the officers.	Ex. 2 to Le Decl., Rubalcava Dep.
23	322. Gonzalez saw Puga's waistband	93:17-19.
24	when he turned to take off running	Ex. 8 to Le Decl., Gonzalez Dep.
25	and never saw a gun in his	100:13-17; Ex. 10 to Le Decl., Erin
26	waistband.	Mangerino Cellphone Video at
27		0:00:50-01:44; Ex. 11 to Le Decl.,
28		Blackwood MVARs Part 4 at 0:42:23-
		42:47; Kee MVARs Part 2 at 46:47-
		47:07.
		Ex. 8 to Le Decl., Gonzalez Dep.
		95:15-25, 115:18-21.

1	323. While Puga was running, his hands were moving in a running motion.	Ex. 8 to Le Decl., Gonzalez Dep. 116:16-21.
2		
3	324. None of the videos that captured the shooting ever show Puga turn back towards the officers or point his hand back towards the officers.	Ex. 10 to Le Decl., Erin Mangerino Cellphone Video at 0:00:50-01:44; Ex. 11 to Le Decl., Blackwood MVARs Part 4 at 0:42:23-42:47; Kee MVARs Part 2 at 46:47-47:07.
4		
5	325. When Puga reached the northwest corner, he changed directions and started running north instead of towards the house on the corner.	Ex. 4 to Le Decl., Adams Dep. 50:15-21; Ex. 7 to Le Decl., Mangerino Dep. 34:3-12.
6		
7	326. Just prior to Puga going to the ground, he was staggering as if he had been struck by gunfire.	Ex. 5 to Le Decl., Vaccari Dep. 52:19-53:4.
8		
9	327. There were gunshots immediately before Puga went to the ground.	Ex. 5 to Le Decl., Vaccari Dep. 53:5-7.
10		
11	328. Puga then fell forward onto his chest and stomach and onto the ground with his hands beside him on the northwest shoulder near the southbound lane, some distance from the northwest corner.	Ex. 1 to Le Decl., Kee Dep. 37:10-13; Ex. 5 to Le Decl., Vaccari Dep. 53:11-21; Ex. 7 to Le Decl., Mangerino Dep. 60:9-61:13.
12		
13	329. Puga's head was oriented north and his feet were to the south after he fell.	Ex. 5 to Le Decl., Vaccari Dep. 53:22-25.
14		
15	330. Puga's hands were next to him when he was on the ground.	Ex. 7 to Le Decl., Mangerino Dep. 61:7-13.
16		
17	331. There was no gun in either of Puga's hands immediately after Puga went to the ground.	Ex. 4 to Le Decl., Adams Dep. 52:18-22.
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1	332. Puga did not pose a threat to	Ex. 1 to Le Decl., Kee Dep. 37:17-
2	anyone after falling to the ground	38:3; Ex. 4 to Le Decl., Adams Dep.
3	and appeared incapacitated.	52:1-6.
4	333. Several shots were fired at Puga	Ex. 1 to Le Decl., Kee Dep. 68:17-24;
5	after he fell to the ground.	Ex. 3 to Le Decl., 25:8-12; Ex. 5 to Le
6		Decl., Vaccari Dep. 43:11-24; Ex. 10
7		to Le Decl., Mangerino Cellphone
		Video at 0:01:04-01:12; Ex. 11 to Le
		Decl., Blackwood MVARs Part 4 at
		0:42:37-42:45.
8	334. Immediately after Puga fell onto	Ex. 10 to Le Decl., Erin Mangerino
9	the ground, Puga slightly raised his	Cellphone Video at 1:00-1:05.
	right leg.	
10	335. Gunshots were going off as Puga	Ex. 10 to Le Decl., Erin Mangerino
11	raised his right leg immediately	Cellphone Video at 1:00-1:05.
12	after he fell to the ground.	
13	336. After Puga fell to the ground,	Ex. 10 to Le Decl., Erin Mangerino
14	several shots are fired and there is a	Cellphone Video at 01:02-01:10.
15	pause before the final two, almost	
16	simultaneous volleys of shots from	
	two different firearms are heard.	
17	337. As the last volleys are going off,	Ex. 10 to Le Decl., Erin Mangerino
18	Puga can be seen jerking on the	Cellphone Video at 01:06-01:10.
	ground as if struck by the gunshots.	
19	338. After Puga went down, Kee did	Ex. 1 to Le Decl., Kee Dep. 89:8-10.
20	not find any other object on or	
21	around Puga's body other than the	
	gun allegedly found near Puga.	
22	339. Throughout the incident, Puga	See Ex. 19 to Le Decl., Photograph of
23	wore a polished, silver watch on his	Puga's Hands after Shooting.
24	left wrist.	
25	340. Puga sustained ten gunshot	Ex. 18 to Le Decl., Jong Dep. 21:19-
26	wounds to his body, altogether.	20.
27	341. There were multiple shots to	Ex. 18 to Le Decl., Jong Dep. 21:21-
28	Puga's backside	22.

1	342. Death was not instantaneous as a	Ex. 18 to Le Decl., Jong Dep. 21:23-
2	result of Puga's gunshot wounds.	22:11.
3	343. Many of the gunshots wounds	Ex. 18 to Le Decl., Jong Dep. 45:25-
4	have a back-to-front trajectory.	46:4.
5	344. Some of the gunshot wounds had	Ex. 18 to Le Decl., Jong Dep. 46:5-8.
6	an upward trajectory.	
7	345. Puga sustained a gunshot wound	Ex. 18 to Le Decl., Jong Dep. 9:2-4,
8	that entered the mid left back with a	9:22-10:4, 10:25-11:2.
9	trajectory of back-to-front, left-to-	
10	right, and upward.	
11	346. The gunshot wound to the mid	Ex. 18 to Le Decl., Jong Dep. 11:13-
12	left back was fatal.	14.
13	347. In order to get the gunshot	Ex. 18 to Le Decl., Jong Dep. 11:22-
14	wound to the mid left back, the back	13:23.
15	would have had to been exposed to	
16	the muzzle of the gun.	
17	348. The upward trajectory of the	Ex. 18 to Le Decl., Jong Dep. 13:6-16.
18	gunshot wound to the mid left back	
19	is consistent with the body leaning	
20	forward or falling forward when	
21	sustaining that wound.	
22	349. Puga sustained a gunshot wound	Ex. 18 to Le Decl., Jong Dep. 13:17-
23	to the lower left back with a	20, 14:14-16.
24	trajectory of back-to-front, left-to-	
25	right, and upward.	
26	350. The gunshot wound to the lower	Ex. 18 to Le Decl., Jong Dep. 31:7-13.
27	left back is consistent with Puga's	
28	back directly facing the shooter.	
	351. The gunshot wound to the lower	Ex. 18 to Le Decl., Jong Dep. 30:7-
	left back could have also been fatal	31:2.
	after a longer period of time.	

1	352. Puga sustained a gunshot wound to the middle right buttock.	Ex. 18 to Le Decl., Jong Dep. 14:17-20.
2		
3	353. Puga sustained two gunshot wounds to the left thigh that entered the side of the thigh and the front of the thigh.	Ex. 18 to Le Decl., Jong Dep. 15:10-16:2.
4		
5		
6	354. The gunshot wound to the front of the left thigh had an upward trajectory.	Ex. 18 to Le Decl., Jong Dep. 16:3-4.
7		
8		
9	355. Puga sustained a gunshot wound to the back of the left thigh with back-to-front, left-to-right and upward trajectory.	Ex. 18 to Le Decl., Jong Dep. 16:8-21.
10		
11		
12	356. Puga sustained a gunshot wound to the lateral left knee with a back-to-front and upward trajectory	Ex. 18 to Le Decl., Jong Dep. 17:3-16.
13		
14	357. Puga sustained two gunshot wounds to the anterior right lower leg with front-to-back, right-to-left, and upward trajectories	Ex. 18 to Le Decl., Jong Dep. 17:20-18:19, 20:3-9.
15		
16		
17	358. The trajectories of the gunshot wounds to the anterior right lower leg are consistent with the body being on the ground with the leg somewhat elevated.	Ex. 18 to Le Decl., Jong Dep. 19:2-24.
18		
19		
20		
21	359. The gunshot wounds to the anterior right lower leg fractured the right tibia and right fibula with hemorrhage throughout	Ex. 18 to Le Decl., Jong Dep. 20:10-24.
22		
23		
24	360. Puga sustained a gunshot wound to the right foot with an upward trajectory	Ex. 18 to Le Decl., Jong Dep. 20:25-21:10.
25		
26		
27	361. There are no bullet wounds that appear to have been caused by a	Ex. 18 to Le Decl., Jong Dep. 47:15-48:2.
28		

1	bullet striking an intermediary	
2	object before striking Puga's body.	
3	362. Kee was the first officer to shoot	Ex. 1 to Le Decl., Kee Dep. 9:4-9.
4	and did not hear any shots fired	
5	before he fired his first shot.	
6	363. Kee claims he fired two volleys	Ex. 1 to Le Decl., Kee Dep. 8:4-9,
7	of shots; one volley of 5 to 8 shots	9:24-10:3, 30:7-9, 34:12-23, 35:2-20,
8	while Puga at the front of the	35:24-36:5, 46:11-18.
9	vehicle and another volley of 10 to	
10	13 shots at Puga's backside while	
11	Puga was running in a northwest	
12	direction.	
13	364. When Kee fired his first shot, he	Ex. 1 to Le Decl., Kee Dep. 60:10-12.
14	could see both of Puga's hands.	
15	365. Puga did not have a gun in his	Ex. 1 to Le Decl., Kee Dep. 12:2-25.
16	hand when Kee fired his first volley.	
17	366. Kee was trained to consider his	Ex. 1 to Le Decl., Kee Dep. 54:16-24.
18	background or backdrop when firing	
19	because if there are residences or	
20	businesses in the background,	
21	innocent people could get shot.	
22	367. Kee was aware that there were	Ex. 1 to Le Decl., Kee Dep. 55:1-19.
23	residences in Puga's background	
24	when Kee was firing both volleys.	
25	368. After the first volley, Kee	Ex. 1 to Le Decl., Kee Dep. 31:11-
26	retreated to the dirt shoulder parallel	32:9, 42:23-43:5.
27	to the side of the CHP vehicle and	
28	went down prone.	
	369. Approximately 3 to 5 seconds	Ex. 1 to Le Decl., Kee Dep. 32:10-16.
	elapsed between the last shot in	
	Kee's first volley and when Kee	
	went down into prone position in the	
	dirt.	

1	370. Kee did not keep a visual on	Ex. 1 to Le Decl., Kee Dep. 43:14-18.
2	Puga while he was repositioning.	
3	371. Kee's back was to Puga while he	Ex. 1 to Le Decl., Kee Dep. 45:22-
4	repositioned to the dirt area.	46:1.
5	372. Approximately 5 to 8 seconds	Ex. 1 to Le Decl., Kee Dep. 54:5-9.
6	elapsed between Kee's first volley	
7	and when he started firing his	
8	second volley.	
9	373. Kee was not struck by any	Ex. 1 to Le Decl., Kee Dep. 33:3-11.
10	gunshots.	
11	374. Kee never mentioned in his	Ex. 1 to Le Decl., Kee Dep. 44:3-7.
12	interview with detectives that he	
13	thought he had been struck.	
14	375. When Kee looked down at his	Ex. 1 to Le Decl., Kee Dep. 65:19-24.
15	left arm, which he claims is where	
16	he thought he had been struck, the	
17	fabric was not torn.	
18	376. Rubalcava heard two shots being	Ex. 2 to Le Decl., Rubalcava Dep.
19	fired before he fired his first shot.	16:5-10.
20	377. Rubalcava was side by side and	Ex. 1 to Le Decl., Kee Dep. 29:10-19,
21	to the right of Kee while they were	30:16-22.
22	approaching and when Kee started	
23	firing.	
24	378. Puga was near the front of the	Ex. 2 to Le Decl., Rubalcava Dep.
25	vehicle when Rubalcava fired his	15:7-10.
26	first volley.	
27	379. Rubalcava heard shots coming	Ex. 2 to Le Decl., Rubalcava Dep.
28	from the passenger's side of the	47:12-17.
	vehicle.	
	380. Rubalcava was not aware that at	Ex. 2 to Le Decl., Rubalcava 68:10-15.
	the time he was firing his first	

1	volley, Adams was also firing from	
2	the other side.	
3	381. Rubalcava claims he fired	Ex. 2 to Le Decl., Rubalcava Dep.
4	approximately 5 shots during his	14:2-8.
5	first volley and 5 to 10 shots during	
6	his second volley.	
7	382. Rubalcava was trained to	Ex. 2 to Le Decl., Rubalcava Dep.
8	consider his background when he	20:20-21:1.
9	shoots because if his bullets miss,	
10	they may hit innocent people.	
11	383. Rubalcava now knows that there	Ex. 2 to Le Decl., Rubalcava Dep.
12	were homes in the background when	21:7-9.
13	he fired his first volley.	
14	384. Rubalcava claims would not	Ex. 2 to Le Decl., Rubalcava Dep.
15	have shot as many shots if he had	92:21-93:1.
16	known there was a home in the	
17	northeast corner at the time of the	
18	shooting.	
19	385. Rubalcava was firing in a	Ex. 2 to Le Decl., Rubalcava Dep.
20	northeast direction during his first	21:16-19.
21	volley.	
22	386. Rubalcava claims that there was	Ex. 2 to Le Decl., Rubalcava Dep.
23	an approximately 5 to 10 second	14:12-18.
24	pause between Rubalcava's first	
25	volley and second volley.	
26	387. Rubalcava took out his magazine	Ex. 2 to Le Decl., Rubalcava Dep.
27	and reloaded before firing a second	22:20-22, 97:13-18.
28	volley of shots.	
	388. Puga was running away when	Ex. 2 to Le Decl., Rubalcava Dep.
	Rubalcava fired his second volley.	18:18-20.
	389. Rubalcava was aiming at Puga's	Ex. 2 to Le Decl., Rubalcava Dep.
	back during the second volley.	18:21-19:1

1	390. When asked during his interview	Ex. 2 to Le Decl., Rubalcava Dep.
2	with detectives after the incident as	55:8-22.
3	to what caused Rubalcava to fire his	
4	second volley, Rubalcava answered	
5	that Puga was still fleeing but that	
6	Puga was not doing anything with	
7	any alleged weapon.	
8		
9	391. There was enough light for	Ex. 2 to Le Decl., Rubalcava Dep.
10	Rubalcava to see Puga while Puga	92:10-12.
11	was running away.	
12		
13	392. Rubalcava does not know	Ex. 2 to Le Decl., Rubalcava Dep.
14	whether he fired shots at Puga after	75:9-13.
15	Puga went to the ground.	
16		
17	393. Rubalcava concedes it would not	Ex. 2 to Le Decl., Rubalcava Dep.
18	have been appropriate to shoot at	97:19-22.
19	Puga if he merely saw a gun in	
20	Puga's waistband.	
21		
22	394. Based on Rubalcava's training,	Ex. 2 to Le Decl., Rubalcava Dep.
23	if Puga had not pointed a gun at	103:7-18.
24	Rubalcava, Rubalcava would not	
25	have shot.	
26		
27	395. Blackwood heard approximately	Ex. 3 to Le Decl., Blackwood Dep.
28	2 to 3 shots coming from his left	11:3-6, 20:13-15, 46:23-47:8.
	before he fired and Kee and	
	Rubalcava were to Blackwood's	
	left.	
	396. Blackwood fired his first volley	Ex. 3 to Le Decl., Blackwood Dep.
	of shots due north while Puga was	28:9-19.
	in the front of the car, near the	
	driver's side.	
	397. Puga had just cleared the front of	Ex. 3 to Le Decl., Blackwood Dep.
	the vehicle when Blackwood started	28:20-23.
	firing.	

1	398. Blackwood was firing at Puga's	Ex. 3 to Le Decl., Blackwood Dep.
2	left side while Puga was hunched	29:9-20.
3	over as if he had been struck by	
4	gunshots.	
5	399. When Blackwood saw Puga	Ex. 3 to Le Decl., Blackwood Dep.
6	bending over, he believed Puga had	34:18-23.
7	been shot.	
8	400. Blackwood was aiming at Puga's	Ex. 3 to Le Decl., Blackwood Dep.
9	back while Puga was running away.	29:25-30:2.
10	401. Blackwood was trying to assess	Ex. 3 to Le Decl., Blackwood Dep.
11	while he was firing by looking for a	24:10-13, 30:23-31:11, 45:23-46:2.
12	gun but could not see Puga's hands	
13	and therefore never saw Puga with a	
14	gun while Puga was running away.	
15	402. Blackwood claims he fired at	Ex. 3 to Le Decl., Blackwood Dep.
16	Puga while Puga was running	54:7-14.
17	because he did not see any gun on	
18	the ground and believed Puga was	
19	still in possession of a gun.	
20	403. Blackwood fired ten shots during	Ex. 3 to Le Decl., Blackwood Dep.
21	his first volley, paused when he saw	36:21-37:7.
22	Puga stumble, and then fired ten	
23	more shots when Puga caught	
24	himself and continued to run.	
25	404. Blackwood came off his sights	Ex. 3 to Le Decl., Blackwood Dep.
26	and paused when he saw Puga	37:12-38:5.
27	stumbling, and when Puga did not	
28	go to the ground, Blackwood got	
	back up on his sights and fired ten	
	more shots.	
	405. When Blackwood saw Puga	Ex. 3 to Le Decl., Blackwood Dep.
	stumble, he believed that some shots	39:24-40:3.
	he fired may have struck Puga.	

1	406. During the time Blackwood was	Ex. 3 to Le Decl., Blackwood Dep.
2	shooting at Puga, Blackwood could	36:18-20.
3	not see Puga's hands.	
4	407. Blackwood is not sure whether	Ex. 3 to Le Decl., Blackwood Dep.
5	he fired any shots at Puga while	40:18-20.
6	Puga was going to the ground.	
7	408. Blackwood claims he stopped	Ex. 3 to Le Decl., Blackwood Dep.
8	firing when he saw Puga stop	30:11-13.
9	moving.	
10	409. When Adams approached the	Ex. 4 to Le Decl., Adams Dep. 40:16-
11	vehicle, Puga was standing in the	22, 41:2-12, 45:11-16.
12	front close to the driver's side	
13	headlight and Adams could only see	
14	Puga from chest up.	
15	410. The passenger door of the	Ex. 4 to Le Decl., Adams Dep. 73:2-6;
16	Expedition was still open when	Ex. 12 to Le Decl., Kee MVARs Part 2
17	Adams and Vaccari approached	at 46:42-46:49.
18	from the passenger side.	
19	411. As Adams was approaching	Ex. 4 to Le Decl., Adams Dep. 35:12-
20	from the passenger's side of the	14.
21	expedition, he heard shots.	
22	412. Adams and Vaccari had only	Ex. 4 to Le Decl., Adams Dep. 76:1-
23	reached the part where the painted	19; Ex. 12 to Le Decl., Kee MVARs
24	curb meets the unpainted curb when	Part 2 at 46:46-46:49; Ex. 16 to Le
25	the shots started, which is near the	Decl., Photograph of Expedition at
26	rear door of the Expedition.	Curb.
27	413. Adams heard shots before he	Ex. 4 to Le Decl., Adams Dep. 35:15-
28	fired.	17.
	414. After hearing the gunshots,	Ex. 4 to Le Decl., Adams Dep. 38:1-4.
	Adams ducked and then stepped	
	over a high curb before firing.	

1	415. Adams yelled at Puga to get on the ground and simultaneously heard shots.	Ex. 4 to Le Decl., Adams Dep. 37:3-6.
2		
3	416. Adams fired his first shot when Puga had already started running.	Ex. 4 to Le Decl., Adams Dep. 37:10-12.
4		
5	417. Adams fired ten shots altogether.	Ex. 4 to Le Decl., Adams Dep. 37:13-14.
6		
7	418. Adams fired three volleys of shots with two distinct pauses between the volleys.	Ex. 4 to Le Decl., Adams Dep. 37:15-18.
8		
9	419. Adams fired three shots during his first volley, four shots during his second volley, and three shots during his third volley.	Ex. 4 to Le Decl., Adams Dep. 37:19-22, 38:5-7, 39:10-12.
10		
11		
12		
13	420. Adams claims he was aiming at Puga's back and side during all three volleys.	Ex. 4 to Le Decl., Adams Dep. 39:13-20.
14		
15	421. Adams had moved closer to the passenger side of the vehicle and was behind the open passenger door for cover when he fired his second volley.	Ex. 4 to Le Decl., Adams Dep. 50:3-10, 74:3-9; Ex. 12 to Le Decl., Kee MVARs Part 2 at 46:55-47:02.
16		
17		
18		
19	422. Puga was still running away when Adams fired his second volley.	Ex. 4 to Le Decl., Adams Dep. 38:8-9.
20		
21		
22	423. One of Adams' concern with being in a residential neighborhood was innocent people being struck due to the number of shots fired.	Ex. 4 to Le Decl., Adams Dep. 55:19-22.
23		
24		
25	424. Adams is not sure whether he fired any shots after Puga went to the ground.	Ex. 4 to Le Decl., Adams Dep. 52:7-17.
26		
27		
28		

1	425. At no time did anyone provide a	Ex. 2 to Le Decl., Rubalcava Dep.
2	verbal warning that deadly force	94:13-15; Ex. 3 to Le Decl.,
3	was going to be used.	Blackwood Dep. 24:17-25; Ex. 5 to Le
4	426. Vaccari remained on target with	Decl., Vaccari Dep. 63:4-6
5	the 40-millimeter as Puga ran away	Ex. 5 to Le Decl., Vaccari Dep. 51:4-
6	and later dropped the 40-millimeter	10; Ex. 12 to Le Decl., Kee MVARs
7	and unholstered his firearm but did	Part 2 at 46:47-47:05.
8	not use it because Puga was going	
9	down or already down.	
10	427. Vaccari's impression what that	Ex. 5 to Le Decl., Vaccari Dep. 52:19-
11	as Puga was running, he had been	53:1.
12	struck by gunfire because it	
13	appeared that Puga was staggering.	
14	428. When Adams and Vaccari	Ex. 4 to Le Decl., Adams Dep. 55:23-
15	approached Puga after the shooting,	56:9; Ex. 5 to Le Decl., Vaccari Dep.
16	Puga was still breathing.	54:4-6.
17	429. Vaccari then decided to deploy	Ex. 4 to Le Decl., Adams Dep. 57:16-
18	the Taser at Puga.	19; Ex. 5 to Le Decl., Vaccari Dep.
19		54:10-13.
20	430. Vaccari did not give Puga a	Ex. 5 to Le Decl., Vaccari Dep. 63:23-
21	verbal warning that he was going to	25.
22	deploy the Taser before deploying	
23	it.	
24	431. The probes made contact and	Ex. 4 to Le Decl., Adams Dep. 57:20-
25	there was tensing and muscle	25; Ex. 5 to Le Decl., Vaccari Dep.
26	reaction and Puga appeared to lock	55:6-9.
27	up.	
28	432. No one went in to handcuff Puga	Ex. 5 to Le Decl., Vaccari Dep. 62:23-
	during the first Taser cycle.	25.
	433. Vaccari later concedes during his	Ex. 6 to Le Decl., Vaccari Dep. 90:3-
	interview with detectives that it	11.
	would have been a much better	
	option to go in and handcuff Puga	
	while he was under the power of the	

1	initial Taser deployment instead of	
2	activating the Taser a second time.	
3	434. Vaccari tased Puga a second	Ex. 5 to Le Decl., Vaccari Dep. 56:20-
4	time.	22.
5	435. Puga's body also locked up	Ex. 4 to Le Decl., Adams Dep. 58:4-
6	during the second Taser activation.	10.
7	436. After the shooting, the officers	Ex. 5 to Le Decl., Vaccari Dep. 57:16-
8	heard someone exclaim about being	24.
9	shot coming from the northeast	
10	corner house	
11	437. The officers learned that three	Ex.1 to Le Decl., 56:22-57:6; Ex. 2 to
12	people from the house on the	Le Decl., Rubalcava Dep. 59:1-17,
13	northeast corner had been shot: an	59:18-22
14	adult male, and adult female, and a	
15	juvenile.	
16	438. The Botten family, consisting of	Ex. 15 to Le Decl., Botten Dep. 63:4-
17	father Jonathan Wayne Botten, Sr.,	64:2, 64:16-19.
18	mother Tanja Dudek-Botten,	
19	daughter Annabelle Botten, and son	
20	J.B., were inside their house when	
21	the shooting happened.	
22	439. J.B. sustained three gunshot	Ex. 15 to Le Decl., Botten Dep. 96:19-
23	wounds to his chest that resulted in	97:13.
24	a collapsed lung on his left side, a	
25	ruptured spleen, and a lot damage to	
26	his internal organs due to the	
27	spreading of the bullets.	
28	440. Dudek-Botten sustained gunshot	Ex. 15 to Le Decl., Botten Dep. 85:20-
	wounds to her face, chest, and right	86:3, 86:7-14, 109:18-110:4.
	shoulder.	
	441. Botten, Sr. sustained gunshot	Ex. 15 to Le Decl., Botten Dep. 70:5-9,
	wounds to his right arm, left arm,	71:20-72:5, 74:7-15, 75:14-20, 76:1-7
	left hand, and right leg.	

1	442. There were bullet strikes to the	Ex. 17 to Le Decl., Ripley Dep. 31:16-
2	front of the Botten residence, the	33:19.
3	screen door of the residence, one of	
4	the bedroom windows, and the side	
5	of the residence.	
6	443. Vaccari violated standard police	Clark Decl. ¶ 12.
7	practices and training when he	
8	deployed pepper balls to strike Puga	
9	and struck Puga in the face.	
10	444. SBSD guidelines directs	Clark Decl. ¶ 12.
11	deputies to anticipate that a suspect	
12	will lower his head and to target	
13	from the upper torso down or	
14	alternatively, target surrounding	
15	objects.	
16	445. SBSD guidelines directs its	Clark Decl. ¶ 12.
17	deputies to not shoot at the head,	
18	neck, or spine unless a deadly force	
19	situation exists.	
20	446. It is undisputed that Puga did not	Clark Decl. ¶ 12.
21	pose an immediate threat of death or	
22	serious bodily injury at the time	
23	Vaccari deployed the pepper ball	
24	launcher and struck Puga in the eye	
25	447. Had Sergeant Vaccari exercised	Clark Decl. ¶ 12.
26	better tactics, Mr. Puga would not	
27	have suffered injuries to his eye	
28	from the pepper ball launcher	
	448. Officers are trained that they are	Clark Decl. ¶ 13a.
	responsible for their tactical	
	decisions when they resort to the use	
	of lethal force.	
	449. The officers' failure to follow	Clark Decl. ¶ 13.
	standard police practices and	
	training in dealing with barricaded	

1	subjects, poor tactics, and rushing to	
2	take Puga into custody once he was	
3	outside of the vehicle all contributed	
4	to the officers' unnecessary use of	
	lethal force.	
5	450. The officers failed to formulate a	Clark Decl. ¶ 13b.
6	safe tactical plan, made poor tactical	
7	decisions, and limited their tactical	
8	options, ultimately leading to their	
	unnecessary use of lethal force.	
9	451. POST Learning Domain 23,	Clark Decl. ¶ 13c.
10	"Crimes in Progress," advises	
11	officers that if available, officers	
12	should request specialized units and	
13	resources as soon as it has been	
	determined that the suspect has	
	taken a barricaded position.	
14	452. SWAT specifically trains to	Clark Decl. ¶ 13c.
15	respond to incidents where	
16	subject(s) may be armed,	
17	barricaded, and refusing to submit to	
	arrest.	
18	453. The utilization of San	Clark Decl. ¶ 13c.
19	Bernardino Sheriff's Department	
20	SWAT would have been a safer	
21	alternative. SWAT is equipped with	
22	special training, equipment, and	
23	tools, which can help resolve the	
	situation of a barricaded subject	
	without escalating the situation.	
24	454. Given that the officers believed	Clark Decl. ¶ 13d.
25	that Puga was involved in a prior	
26	freeway shooting, was still armed,	
27	was refusing to exit his vehicle, and	
28	was situated in a residential	
	neighborhood, Vaccari's failure to	
	request for SWAT to respond when	

1	initially requested by Kee and after	
2	initial less-lethal force was	
3	unsuccessful were poor tactical	
4	decisions that contributed to the	
5	officers' use of unnecessary lethal	
6	force.	
7	455. Among the "Fatal Errors" listed	Clark Decl. ¶ 13e.
8	by POST Learning Domain 23,	
9	"Crimes in Progress," is poor	
10	positioning due to rushing or poor	
11	tactics.	
12	456. The officers' decision to leave	Clark Decl. ¶ 13e.
13	cover and enter an open-air	
14	environment to take Puga into	
15	custody, when the officers stated	
16	that they still believed Puga to be	
17	armed and dangerous, and Kee	
18	stated that he was in fear for his life	
19	at the time he made the decision to	
20	approach and take Puga into	
21	custody, was a tactically poor	
22	decision.	
23	457. The situation did not call for an	Clark Decl. ¶ 13e.
24	urgent response at the time the	
25	officers approached Puga.	
26	458. Officers are trained that deadly	Clark Decl. ¶ 14.
27	force is only justified when there is	
28	an objectively reasonable belief that	
	the suspect poses an immediate	
	threat of death or serious bodily	
	injury.	
	459. Officers are trained that	Clark Decl. ¶ 14.
	subjective fear is insufficient to	
	justify the use of deadly force.	

1	460. Officers are also trained that an overreaction is excessive force.	Clark Decl. ¶ 15.
2		
3	461. Under the facts and circumstances as alleged by Kee at the time he initially shot Puga that Kee violated standard police practices and training when he shot at Puga when he saw Puga drop his right hand from a raised position.	Clark Decl. ¶ 16.
4		
5		
6		
7		
8	462. Kee overreacted when he saw Puga drop his right hand from a raised position.	Clark Decl. ¶ 16.
9		
10		
11	463. The percipient witness' cell phone video, labeled COSB0001459, shows Puga's frontside as he exits the car and there appears to be no weapon on or near Puga's waistband.	Clark Decl. ¶ 16.
12		
13		
14		
15	464. Rubalcava, Blackwood, Kee, and Adams violated standard police practices and training when they shot at Puga while he was running away.	Clark Decl. ¶ 17.
16		
17		
18		
19	465. Puga did not present an immediate threat of death or serious bodily injury as he was running and the officers failed to reassess and overreacted when they fired subsequent volleys when Puga was running.	Clark Decl. ¶ 17.
20		
21		
22		
23		
24	466. Officers are trained that deadly force may only be used in an immediate defense of life situation.	Clark Decl. ¶ 17a.
25		
26		

27
28

1 2 3	467. There was no immediate defense of life situation while Mr. Puga was running away.	Clark Decl. ¶ 17a.
4 5 6	468. There were no bullet impacts or casings found near the area of the initial shooting that would support the allegation that Mr. Puga fired a weapon at anyone.	Clark Decl. ¶ 17a.
7 8 9 10 11 12	469. Officers are trained that they may use deadly force against a fleeing suspected felon to prevent escape only if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officers or others.	Clark Decl. ¶ 17c.
13 14	470. There is evidence that this was likely a situation of contagious fire.	Clark Decl. ¶ 17d.
15 16 17 18 19	471. Officer Rubalcava, Officer Blackwood, Sergeant Kee, and Deputy Adams violated standard police practices and training when they shot at Mr. Puga after he had fallen to the ground.	Clark Decl. ¶ 18.
20 21 22	472. Mr. Puga was not an immediate threat of death or serious bodily injury after he had fallen to the ground.	Clark Decl. ¶ 18a.
23 24 25 26	473. The officers had time to provide Mr. Puga with a warning that deadly force was going to be used prior to the shooting and time to provide an additional warning that deadly force was going to be used in between	Clark Decl. ¶ 19.

1	their first and subsequent volleys of	
2	shots.	
3	474. Officer Rubalcava, Officer	Clark Decl. ¶ 20.
4	Blackwood, Sergeant Kee, and	
5	Deputy Adams violated standard	
6	police practices and training when	
7	they failed to consider their	
8	background prior to utilizing deadly	
9	force, resulting in the serious	
10	injuries of innocent bystanders.	
11	475. The officers violated standard	Clark Decl. ¶ 21.
12	police practices and training in	
13	failing to request backup to set up a	
14	perimeter and evacuate uninvolved	
15	individuals from the area in order	
16	the ensure the safety of these	
17	uninvolved individuals.	
18	476. Sergeant Vaccari's two-time	Clark Decl. ¶ 22.
19	deployment of the Taser at Mr. Puga	
20	after he had been shot twice and was	
21	clearly incapacitated without prior	
22	verbal warning violated standard	
23	police practices and training.	
24	477. The San Bernardino Sheriff's	Clark Decl. ¶ 22a.
25	Department Manual advises its	
26	deputies that a Taser may only be	
27	used when objective facts indicate	
28	that the suspect poses an immediate	
	threat to the safety of the officer or a	
	member of the public.	
	478. Officers are also trained on the	Clark Decl. ¶ 22b.
	concept of "cuffing under power" in	
	which an officer can safely go in	
	and handcuff a suspect while the	
	suspect is under effects of the	

1	neuromuscular incapacitation of the	
2	Taser.	
3	479. The second Taser deployment	Clark Decl. ¶ 22b.
4	violated standard police practices	
5	and training because it was clear	
6	from the first Taser deployment that	
7	Mr. Puga was incapacitated when	
8	his muscles responded to the Taser	
9	deployment but he did not respond,	
10	no verbal warning was given prior	
11	to the second Taser deployment, and	
12	Sergeant Vaccari admits that the	
13	second deployment would have	
14	been unnecessary had he considered	
15	at the time to go in and handcuff	
16	Mr. Puga while he was under the	
17	power of the Taser during the first	
18	Taser deployment.	
19	480. L.C. was born in 2013.	Ex. 21 to Le Decl., Cadena Dep. 12:19-20.
20	481. After L.C. was born, Puga	Ex. 21 to Le Decl., Cadena Dep. 37:16-22.
21	desperately wanted to see L.C.	
22	482. At some point, Puga approached	Ex. 21 to Le Decl., Cadena Dep. 38:3-7.
23	L.C.'s mother and told her that he	
24	would voluntarily support L.C.	
25	because she was his child.	
26	483. Puga told L.C.'s mother that he	Ex. 21 to Le Decl., Cadena Dep. 38:8-12.
27	would buy L.C. whatever she	
28	needed or whatever L.C.'s mother	
	needed.	
	484. After L.C. was born, Puga was	Ex. 22 to Le Decl., Salas Dep. 23:12-14; Ex. 23 to Le Decl., Hernández Dep. 31:14-21, 35:13-15.
	incarcerated for three to four years	
	and then again from approximately	
	2019 to shortly before his death.	

1	485. Puga would see L.C. at times	Ex. 21 to Le Decl., Cadena Dep. 26:6-
2	when L.C. visited her grandmother,	13, 28:4-7.
3	Puga's mother.	
4	486. L.C. visited Puga's mother	Ex. 21 to Le Decl., Cadena Dep. 26:14-
5	approximately seven times.	17, 27:10-13.
6	487. L.C. spoke to Puga over the	Ex. 21 to Le Decl., Cadena Dep. 28:21-
7	phone approximately three times.	24.
8	488. Puga would have preferred to	Ex. 22 to Le Decl., Salas Dep. 30:10-
9	see L.C. more often.	20.
10	489. L.C.'s mother saw Puga the	Ex. 21 to Le Decl., Cadena Dep. 15:16-
11	Friday before he died and Puga	16:6.
12	asked about how L.C. was doing.	
13	490. Puga would regularly follow the	Ex. 21 to Le Decl., Cadena Dep. 16:7-
14	bus L.C.'s mother drove for work	14.
15	whenever Puga was in Long Beach	
16	and ask about L.C.	
17	491. Puga had previously contacted	Ex. 21 to Le Decl., Cadena Dep. 28:11-
18	L.C.'s mother about seeing L.C.	13.
19	492. In the two years before Puga's	Ex. 22 to Le Decl., Salas Dep. 30:10-
20	passing, Puga would see L.C. at	20; 31:2-16, 81:6-10.
21	times when L.C. visited her aunt	
22	Susie, Puga's sister.	
23	493. In Plaintiffs' police practices	See Ex. 24 to Le Decl., Roger Clark
24	expert Roger Clark's Rule 26 Expert	Rule 26 Report.
25	Report, he opined on the	
26	reasonableness of Vaccari's	
27	deployment of the pepperball	
28	projectile that struck Puga's eye and	
	Vaccari's subsequent deployments	
	of the Taser.	